

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 YAVAPAI COUNTY, ARIZONA
 FOR THE COUNTY OF YAVAPAI

2011 DEC 29 AM 8:27

SANDRA K MARKHAM, CLERK
 BY *Stephanie Kling*

STATE OF ARIZONA,)

Plaintiff,)

vs.)

Case No. V1300CR201080049

JAMES ARTHUR RAY,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY TWENTY-SIX

APRIL 1, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant)
9

10
11
12
13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R DARROW
16 TRIAL DAY TWENTY-SIX
17 APRIL 1, 2011
18 Camp Verde, Arizona
19
20
21
22
23

24 REPORTED BY
25 MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

3
1 I N D E X

2
3 EXAMINATIONS PAGE
4 WITNESS
5 FAWN L. FOSTER
6 Direct by Ms. Polk 22
7 Cross by Mr. Kelly 160
8 Redirect by Ms. Polk 251
9 Recross by Mr. Kelly 278

10 EXHIBITS ADMITTED

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
Number Page
812, 813 20
552 69
227 71
232, 233, 236 87
508 189
234 212
231 214
235, 237 216

1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: SHEILA SULLIVAN POLK, ATTORNEY
5 BY: BILL R. HUGHES, ATTORNEY
6 255 East Gurley
7 Prescott, Arizona 86301-3868

8 For the Defendant.

9 THOMAS K. KELLY, PC
10 BY: THOMAS K. KELLY, ATTORNEY
11 425 East Gurley
12 Prescott, Arizona 86301-0001

13 MUNGER TOLLES & OLSON, LLP
14 BY: LUIS LI, ATTORNEY
15 BY: TRUC DO, ATTORNEY
16 355 South Grand Avenue
17 Thirty-fifth Floor
18 Los Angeles, California 90071-1560

19 MUNGER TOLLES & OLSON, LLP
20 BY: MIRIAM L. SEIFTER, ATTORNEY
21 560 Mission Street
22 San Francisco, California 94105-2907
23
24
25

1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Friday, April 1,
3 2011, at Yavapai County Superior Court, Division
4 Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(Proceedings continued outside presence of jury.)

THE COURT: The record will show the presence of Mr. Ray and his attorneys, Mr. Li and Mr. Kelly. The state's represented by Ms. Polk and Mr. Hughes. The jury is not present.

And I have just been informed that there may be a 609 issue to take care of.

Counsel?

MR. KELLY: Judge, maybe I can try to explain this very quickly. I don't know if the state would have any objection to me approaching to show you my notes.

MR. HUGHES: That's fine.

MR. KELLY: Judge, these are my notes. However, we've exchanged the documents supporting that summary. It's just easier to understand. The question is as to the 1997 agg DUI conviction in Division 1 where Ms. Foster was represented by counsel, whether under 609 that particular DUI conviction can be used to impeach her credibility.

And referring to 609(b), I believe it's necessary for you to make a determination as to whether or not the probative value substantially

outweighs its prejudicial effect. The that's one request we have.

Then you will also note, Judge, as we go down through the list of convictions, there is a little word that says in, i-n. That's the ones that we agree on. We end up in a 2006 conviction in front of Judge Kiger in Division 5.

And the discussion right now is whether 13-901.01 applies because of recent case law indicating since the person could not be sent to prison, then 609 would preclude its use.

And I have reviewed the plea agreement. And we have a copy for that, Judge. And it indicates on page 3 an avowal and a reference to 13-901.01.

If I may approach, Judge?

THE COURT: Yes. Thank you.

MR. KELLY: Given the avowal by Ms. Foster and the State of Arizona and the plea agreement, I've provided to you a copy of the specific arrest reference to 13-901.01. So we'll leave it to your discretion whether either one of those two felony convictions could be used for impeachment.

THE COURT: I wish I had a little advance notice on this because there had been some

decisions regarding the original Prop 200.

MR. HUGHES: Your Honor, there is a decision. The state cited it in its response on the issue of Ms. Foster's priors. And I think the controlling decision is ex rel Romley versus Martin, which is 205 Arizona 279.

And, basically, it says if the offense was not subject to 13-901.01 -- or if it was in the sense that it's subject to that statute so that it required probation for a conviction, then it would not be considered a felony under 609 purposes.

That's precisely the situation that those February 2006 convictions fall under. The plea contains an avowal that they were subject to 13901.01. And the plea -- paragraph 4 of the plea has that standard language. It says, the charging document is amended by the -- to be in conformity with the plea agreement.

So in that case the charges that she pled guilty to were amended to be in conformity with that avowal, which is that they were subject to 13-901.01.

THE COURT: Does anybody have any further argument or law with regard to the aggravated DUI from July of '97?

MR. HUGHES: Your Honor, with respect to that aggravated DUI, that was discussed in the pleadings. It's the state's position that it's 13 years old. It's outside the 10-year presumptive time period that the rule requires.

And the rule also requires if you're going to go outside of that 10-year presumptive time period, the proponent of the evidence has to offer -- it has to offer specific facts and circumstances showing that in the interest of justice the probative value outweighs its prejudicial effect. And that's a requirement under 609(b).

The state's -- or -- excuse me. The defendant's motion to use that prior did not even discuss, much less argue, specific facts and circumstances that outweigh its prejudicial effect. It's the state's position there are none, Your Honor.

The jury will hear that Ms. Foster has felony convictions. They're going to hear about the other conviction that she had from 2006. The state agrees that that should come in. The jury is going to hear about her false reporting convictions in the city court and in the superior court. So

1 they're going to know that she is not coming in
2 front of them with a pristine past.

3 THE COURT: Mr. Kelly, anything else on the
4 '97 conviction?

5 MR. KELLY: Judge, I would, again, simply
6 submit the issue to the Court. I agree with
7 Mr. Hughes' argument in regards to the 609(b). And
8 I would proffer for the Court's review in making
9 this decision information regarding that
10 conviction, which is the presentence report, and
11 then submit it to your discretion.

12 THE COURT: Mr. Hughes, have you seen the
13 presentence report?

14 MR. HUGHES: Your Honor, I believe we have it.
15 I don't know if I've seen it, but it's part of the
16 court file. And if Mr. Kelly wants to provide the
17 Court with another copy, I don't have any
18 opposition.

19 MR. KELLY: And, Judge, with regards to
20 specific facts and circumstances, I would just
21 submit this document and leave it to your
22 discretion.

23 THE COURT: Thank you.

24 MR. HUGHES: Your Honor, I'm told we don't
25 have it. But, again, it would be part of the

1 record in that '97 case. I think it's appropriate
2 for the Court to consider.

3 MR. KELLY: And, Judge, just out of an
4 abundance of caution, perhaps we should mark that
5 as an exhibit. Of course, it's not admitted. But
6 for the record.

7 THE COURT: All right.

8 MR. HUGHES: Your Honor, the final argument
9 the state had raised regarding the '97 aggravated
10 DUI -- it's a technical argument. But it did deal
11 with the defendant's notice to the state that it
12 intended to use that prior. And that is discussed
13 in the state's response.

14 But the notice was not provided within
15 the deadline that Rule 609 calls for. For that
16 technical reason alone, the aggravated DUI prior
17 shouldn't be used.

18 THE COURT: And I do want to go through these
19 just one at a time and make sure the record is
20 clear as to where the ruling on admissibility
21 stands.

22 So with regard to the aggravated DUI
23 conviction of July 14, '97, I find that the prior
24 is more than 10 years old. There is no indication
25 there was a prison sentence or something that

1 brought this within any time limit for any type of
2 argument.

3 I don't find that there is a notice
4 issue.

5 MR. KELLY: If necessary, Judge, I can respond
6 to that final comment?

7 THE COURT: I do not find a notice issue.

8 MR. KELLY: Okay.

9 THE COURT: That's what I indicated.

10 MR. KELLY: Thank you.

11 THE COURT: I do find that the probative value
12 of admitting the conviction does not substantially
13 outweigh the prejudicial effect of its admission.
14 So the '97 offense would not be admitted.

15 And, Mr. Kelly, I'm going to mark this
16 presentence report. This will be marked and
17 admitted.

18 Let me address, then, the false reporting
19 conviction of August 13, 2002. And there is not
20 any argument with regard to that?

21 MR. HUGHES: That's correct, Your Honor.

22 MR. KELLY: That's correct.

23 THE COURT: I'll make a finding. I'm looking
24 at the nature of the offense. And I find that the
25 conviction occurred within 10 years and that the

1 offense involved dishonesty or false statement.
2 And that conviction would be admissible.

3 And in what form was it going to be
4 proposed to offer? Often the state would want to
5 bring that up initially on the direct. But what
6 information was proposed in terms of getting that
7 evidence before the jury?

8 MR. HUGHES: Your Honor, if I could defer to
9 Ms. Polk. She'll be dealing with it.

10 THE COURT: Ms. Polk.

11 MS. POLK: Your Honor, I will bring it up
12 through the witness.

13 THE COURT: Okay. All right.

14 MR. KELLY: Judge, I thought in response to
15 your question of form -- and that's why I took the
16 time to write up a summary with the cause number,
17 the county, the fact that she was represented by
18 counsel, and the title of the crime.

19 THE COURT: Ms. Polk, do you have a copy of
20 Mr. Kelly's proposed information?

21 MS. POLK: No, I don't.

22 THE COURT: Okay.

23 MR. KELLY: I made that last night, Judge.
24 That's consistent with what I've experienced in the
25 past. That's why --

1 THE COURT: And let me go on through this.
2 And then we'll address that at the end with
3 Ms. Polk and look at these notes.

4 Now, with regard to March 18, 2005, that
5 false-reporting conviction -- and the parties agree
6 on that. And, again, I find that the conviction is
7 under 10 years old and it involved dishonesty or
8 false statement, and it will be admissible.

9 Then there is no note next to the
10 February 8, '06, Class VI felonies. And I assume
11 that's because that's a 13-901.01 and it just would
12 not qualify.

13 MR. KELLY: And, Judge, what I did is
14 submitted that plea agreement for your review. And
15 we'll leave it up to your discretion.

16 THE COURT: For some reason I was looking -- I
17 did just --

18 MR. KELLY: I believe page 3 of the document
19 makes reference to the 13-901.01.

20 MR. HUGHES: Your Honor, I think for purposes
21 of making a clear record, we probably should have
22 that marked also.

23 THE COURT: Okay. This plea agreement would
24 be marked as well. And, of course, staple these
25 things and keep them gathered.

1 I find that that conviction would not be
2 admissible for February 8, '06, under the law.
3 And, furthermore, there is going to be one that is
4 admissible -- a felony that is admissible very
5 close in time. And it just would not add anything
6 significantly. It would raise more of a question
7 about the problem with probative value versus
8 prejudicial effect. I'll note that in addition.

9 Then there is also the November 13, '06.
10 And that would be admissible. It's a possession of
11 drug paraphernalia. The parties agree on that.
12 And I do find that that prior is -- it's a
13 conviction under 10 years old. It was punishable
14 by imprisonment for more than one year.

15 And I further find that the probative
16 value of evidence of the prior conviction outweighs
17 any prejudicial effect. And that finding applies
18 to all of these as well that I'm finding admitted.

19 And then there's a -- it says on --
20 July 3rd. It's agreed that that one would not be
21 in.

22 MR. KELLY: Correct.

23 MR. HUGHES: Your Honor, that was a dismissed
24 charge --

25 THE COURT: Okay.

1 MR. HUGHES: -- the July 3rd.

2 THE COURT: Then, Mr. Kelly, if you could show
3 this to Ms. Polk and see if there can't be an
4 agreement on the form of admitting the priors.

5 MR. HUGHES: Your Honor, as far as the
6 language Mr. Kelly's highlighted, and I think he
7 struck out on a portion of one. The language on
8 there --

9 I think you struck that out.

10 MR. KELLY: I did. Yeah. The prison term.

11 MR. HUGHES: That is fine. Although I do
12 think the state should be permitted to draw the
13 sting to ask about some of the facts and
14 circumstances surrounding the convictions. But as
15 far as the language itself, that's fine.

16 MR. KELLY: Judge, if they want to open the
17 door to the facts and circumstances underlying the
18 conviction, then I think that it's going to be a
19 longer day in court. Because I'm entitled to ask
20 questions as well. And I'm not sure that it does
21 not change my entire argument regarding the
22 admissibility of the others as well.

23 So, again, I came here with an assumption
24 that this limited information identifying the
25 court, the date, the title of the crime, and the

1 fact that you're represented by counsel was the
2 entire scope of drawing the sting on -- during
3 direct as well as the cross-examination.

4 If they're going to ask underlying facts,
5 Judge, then I would submit that opens the door and
6 may, in fact, open the door to some of these other
7 dishonest statements that I have a good-faith basis
8 to ask, such as providing false information on
9 July 3rd, 2006, which was dismissed. I have the
10 police report. So I'll leave that to the Court's
11 discretion.

12 THE COURT: All right.

13 MR. KELLY: I wonder if I could get a copy of
14 this, Judge.

15 THE COURT: Yes. I do want to have copies
16 distributed.

17 MR. KELLY: I think the state's requesting
18 that my little notes be marked too. And I have no
19 objection.

20 THE COURT: Okay. So three copies, Ken.

21 You know, I have to say that the decision
22 on the '97 had something to do with the quantity of
23 priors that were coming in as well. And in looking
24 at the presentence report, there is an element of
25 having kind of a continuous -- I think it could be

1 a problem, Mr. Hughes, if you get into the details
2 of this.

3 MR. HUGHES: And, Your Honor, with respect to
4 the details, primarily the state's concern was on
5 the false-reporting charges. It's our
6 understanding that on -- at least once Ms. Foster
7 had given a false name when she got pulled over for
8 a traffic violation and then relatively quickly
9 fessed up to who she was, still got the citation
10 and then the conviction.

11 I think that the fact that there was some
12 quick remedial action on her part would be
13 probative to the dishonesty that she made. I mean,
14 that's what we meant by going into the facts and
15 circumstances.

16 Obviously the drug convictions speak for
17 themselves. But the false reporting -- I think to
18 throw that out there when -- you know -- false
19 reporting is something that goes to honesty or
20 dishonesty. There should be some permission to
21 allow the parties to explore and explain.

22 And certainly I think Mr. Kelly can
23 explore and try and explain that 2002 and that 2005
24 false reporting also if it didn't go down the way
25 that Ms. Foster is going to say that it went down.

1 MR. KELLY: Judge, just to complete the story
2 so you're aware, my understanding is the reason she
3 gave a false name was because she believed there
4 was a warrant for failure to appear and failure to
5 pay fines. And, again, I leave it to your
6 discretion. But if the door is open, Judge, I
7 would ask permission to --

8 MR. HUGHES: I mean, I would agree, Judge. If
9 that was her reason -- and I think Mr. Kelly -- if
10 we don't draw the sting on that, I think Mr. Kelly
11 can ask about if she thought there was a warrant
12 out there and that's why she gave a false name.

13 THE COURT: And Mr. Kelly also talked about
14 discussing the 2006 incident and has a police
15 report and is, I think, suggesting that under
16 Rule 608(b) that's an appropriate inquiry. And it
17 may well be.

18 So if you go into that, Mr. Hughes, there
19 is going to be the discussion. And Mr. Kelly has
20 indicated he may be offering that incident
21 apparently under 608(b). So that may come in as
22 well.

23 MR. HUGHES: Okay. So we understand, it's the
24 Court's ruling at this time that that discussion
25 about the 2002 and the 2005 convictions, at this

1 time, the Court's determined that that would open
2 the door to an '07 arrest? Or is it just --

3 THE COURT: It may. Anyway, I want to alert
4 people to look at 608(b). And that's what I gather
5 would be the basis for asking about that. When
6 Mr. Kelly told me he had a police report, he's
7 indicating -- you know -- he has enough information
8 to at least be able to cross-examine it.

9 And I, of course, would have to make a
10 determination that it's -- you know -- a specific
11 incident of conduct that would concern the
12 character for truthfulness or untruthfulness. And
13 I have to make that determination under 608(b).

14 But if there is a police report that --
15 there's probably -- well, there could be a basis
16 for it.

17 Anyway, are we ready to proceed?

18 MS. POLK: Your Honor, I've got -- if I can
19 just have a moment with Mr. Kelly. I'm not sure
20 one of these dates is correct.

21 MR. KELLY: Which one?

22 MS. POLK: Well, I'm looking at -- it says
23 3/18/05 for CR-820050156. The date of sentencing
24 according to our document is January 30, 2006.

25 MR. KELLY: The date of sentencing on the

1 document says March 10, 2005.

2 THE COURT: Okay. I do want to announce the
3 two exhibits that are admitted for the 609 hearing.
4 Exhibit 812 is the presentence report. Exhibit 813
5 is the plea agreement filed March 10, 2005. And
6 those are in the record now -- those exhibit
7 numbers.

8 (Exhibits 812 and 813 admitted.)

9 THE COURT: Counsel, have you resolved the
10 issue?

11 MS. POLK: Yes. I think a couple of dates
12 need to be changed, Your Honor. And I know that
13 the parties already marked and gave to the Court
14 Mr. Kelly's piece of paper.

15 THE COURT: All right. Oh. We don't have it.
16 So why don't you go ahead and make the changes. I
17 want to get the correct one into the record and
18 then make corrected copies and we should be ready
19 to go.

20 MR. KELLY: May I approach?

21 THE COURT: Yes.

22 MR. KELLY: Judge, and I'd just use the words
23 "out" and "in" for what can be used for.

24 THE COURT: Okay. Then this will be marked as
25 14. And that will be part of the record as well.

1 Anything else?

2 MR. KELLY: No, Judge.

3 MR. HUGHES: No, Your Honor.

4 THE COURT: Okay.

5 We'll get the jury in.

6 (Proceedings continued in the presence of

7 jury.)

8 THE COURT: The record will show the presence

9 of the defendant, Mr. Ray, the attorneys, and the

10 jury.

11 And the state may call the next witness.

12 MS. POLK: The state calls Fawn Foster,

13 please.

14 THE COURT: Okay. Fawn Foster.

15 Ma'am, if you could please step to the

16 front of the courtroom where the bailiff is

17 directing you, and then raise you're right hand and

18 be sworn by the clerk.

19 FAWN L. FOSTER,

20 having been first duly sworn upon her oath to tell

21 the truth, the whole truth, and nothing but the

22 truth, testified as follows:

23 THE COURT: Please be seated here at the

24 witness stand.

25 Would you please state and spell your

1 full name.

2 THE WITNESS: Fawn Lee Foster.

3 THE COURT: And the spelling of your name,

4 please.

5 THE WITNESS: F-a-w-n, L-e-e, F-o-s-t-e-r.

6 THE COURT: Thank you, ma'am.

7 Ms. Polk.

8 MS. POLK: Thank you.

9 DIRECT EXAMINATION

10 BY MS. POLK:

11 Q. Good morning, Ms. Foster.

12 A. **Good morning.**

13 Q. Can you tell the jury what community you

14 live in.

15 A. **I live in Cottonwood.**

16 Q. How long have you lived there?

17 A. **Twenty-one years.**

18 Q. Where are you originally from?

19 A. **Texas, Houston.**

20 Q. When did you come out to Arizona?

21 A. **In -- June the 4th of '90 -- of '90.**

22 Q. Directly to Cottonwood?

23 A. **Yes, ma'am.**

24 Q. And are you employed?

25 A. **Yes, ma'am.**

1 Q. Tell the jury where you work.

2 A. **Angel Valley Spiritual Retreat Center.**

3 Q. Tell the jury what that is.

4 A. **It's a retreat center for**

5 **nondenominational groups, individuals, to go and**

6 **just have time to themselves. And that's what it**

7 **is.**

8 Q. When did you first start working there?

9 A. **April the 29th of '08.**

10 Q. Describe for the jury what your

11 employment is. What do you do there?

12 A. **At the time I was employed as a**

13 **dishwasher. It has since evolved into I'm a**

14 **housekeeper and maintenance and plumber and**

15 **everything.**

16 Q. When you first started working there as a

17 dishwasher, did you have other duties?

18 A. **On the weekends I did housekeeping.**

19 Q. And that was, you said, April of 2008?

20 A. **Yes, ma'am.**

21 Q. When did your job evolve into more than

22 being the primary dishwasher?

23 A. **That would be the beginning of '09.**

24 Q. And today what are your duties there?

25 A. **Maintenance and housekeeping.**

1 Q. Are you no longer dishwashing?

2 A. **Well, that's all part of housekeeping**

3 **too. I do a little bit of everything.**

4 Q. One size fits all?

5 A. **Yeah.**

6 Q. Did you ever live on the property?

7 A. **No, ma'am.**

8 Q. And where you live in Cottonwood, you

9 have resided since when?

10 A. **2000, I believe.**

11 Q. Ms. Foster, in 2002 did you get into some

12 trouble with the law?

13 A. **Yes, ma'am, I did.**

14 Q. And as a result -- I'm just going to read

15 to you some information. Do you have a conviction

16 for false reporting to a law enforcement officer

17 from the Cottonwood Municipal Court dated

18 August 13, 2002, in CR-200221647?

19 A. **Yes, ma'am.**

20 Q. You may not know all those numbers. But

21 you recall a conviction in Cottonwood Municipal

22 Court?

23 A. **Yes, ma'am. I do.**

24 Q. And at that case you did not have an

25 attorney; is that correct?

1 **A. No, ma'am. I did not.**
 2 **Q.** And that case was in front of
 3 Judge Daniel Bruno?
 4 **A. Yes.**
 5 **Q.** And then you also have a conviction for
 6 false reporting to a law enforcement officer in the
 7 Yavapai County Superior Court from March 10th,
 8 2005, in CR-820050156?
 9 **A. Yes, ma'am.**
 10 **Q.** And you pled guilty to that?
 11 **A. Yes, ma'am. I did.**
 12 **Q.** You were represented by an attorney. Do
 13 you recall that?
 14 **A. I don't remember whether I was or not.**
 15 **Q.** Do you remember that you pled guilty?
 16 **A. Yes, ma'am.**
 17 **Q.** And then do you have a conviction for
 18 drug paraphernalia dated November 13, 2006 --
 19 **A. Yes, ma'am.**
 20 **Q.** -- in CR-820060728 for the Yavapai County
 21 Superior Court?
 22 **A. Yes, ma'am.**
 23 **Q.** Do you recall that? You were represented
 24 by an attorney then?
 25 **A. Yes, ma'am.**

1 **Q.** And you pled guilty then?
 2 **A. Yes, ma'am. I did.**
 3 **Q.** Did you have a drug problem, Ms. Foster?
 4 **A. Yes, ma'am. I did.**
 5 **Q.** And did you go to prison?
 6 **A. Yes, ma'am. I did. Biggest blessing**
 7 **that ever happened to me.**
 8 **Q.** And what do you mean?
 9 **A. I've been sober since 2007 -- or 2006.**
 10 **Excuse me. I went to prison, had downtime away**
 11 **from drugs and away from all the pressures of life.**
 12 **And I came out with a new attitude, a new set of**
 13 **teeth, and just a whole new life. Best blessing**
 14 **that ever happened.**
 15 **Q.** And have you been in trouble with the law
 16 since then?
 17 **A. No, ma'am.**
 18 **Q.** In -- during this time that you had the
 19 trouble with the law, were you working at
 20 Angel Valley?
 21 **A. No, ma'am.**
 22 **Q.** When was it that you got out of prison?
 23 **A. I got out in '07, July 4th of '07.**
 24 **Q.** Did you find employment when you got out
 25 of prison?

1 **A. No, ma'am. I went back to a part-time**
 2 **job cleaning restaurants. That lasted for a couple**
 3 **of months. And struggled door to door looking for**
 4 **work. And, like I said, in '08 Angel Valley gave**
 5 **me a chance. And I've been there ever since.**
 6 **Q.** How did you get that job at Angel Valley?
 7 **A. My stepson was working there as a chef.**
 8 **And he called me up and said, we need help. Can**
 9 **you come?**
 10 **And I said, I'll be there in a minute.**
 11 **And it's all history from there.**
 12 **Q.** You've been there ever since?
 13 **A. Yes, ma'am.**
 14 **Q.** And you're still employed there today?
 15 **A. Yes, ma'am.**
 16 **Q.** I want to take you to October of 2009.
 17 What were your employment duties then at
 18 Angel Valley?
 19 **A. I was dishwasher, housekeeper, part-time**
 20 **cook, part-time maintenance, a little bit of**
 21 **everything.**
 22 **Q.** With respect to the sweat lodge ceremony
 23 conducted by Mr. Ray on October 8, 2009, were you
 24 present that day?
 25 **A. Yes, ma'am.**

1 **Q.** And since that time have you watched any
 2 news coverage about the event?
 3 **A. No, ma'am. I have not.**
 4 **Q.** And why not?
 5 **A. Because I don't need to hear it. I was**
 6 **there, and it just brings it back up. And I just**
 7 **don't need to hear it.**
 8 **Q.** Did you catch some coverage of
 9 Dr. Beverly Bunn? Do you recall?
 10 **A. Yeah. I can't tell you what she said at**
 11 **this point. But she was on the TV, and I turned**
 12 **it.**
 13 **Q.** And then other than that, you haven't
 14 watched the news coverage?
 15 **A. No, ma'am.**
 16 **Q.** Speaking of sweat lodges, have you
 17 yourself been involved in a sweat lodge?
 18 **A. Yes, ma'am. Several times in my life.**
 19 **Q.** Tell the jury when.
 20 MR. KELLY: Your Honor, objection. Relevance.
 21 THE COURT: Overruled.
 22 You may answer that.
 23 THE WITNESS: Back in Texas I was involved in
 24 several sweat lodges with Gray Eagle Lodge. Here
 25 in Arizona I've been in three lodges here. One

1 with Frankie Running -- or two with Frankie
2 Running. I'm sorry. And then one at Angel Valley
3 earlier in '09.

4 **Q.** BY MS. POLK: Where were the sweat lodges
5 that you were involved in with Frankie Running?

6 **A.** In Cornville.

7 **Q.** In Cornville. And then on Angel Valley
8 when were you in a sweat lodge?

9 **A.** I can't remember the exact date. It was
10 sometime in '09 -- earlier in '09.

11 **Q.** 2009?

12 **A.** Yes, ma'am.

13 **Q.** Were you in the sweat lodge conducted by
14 Mr. Ray?

15 **A.** No, ma'am.

16 **Q.** But you were on the property that day?

17 **A.** Yes, ma'am.

18 **Q.** Were you -- let's start with that day in
19 particular. Do you recall that morning what you
20 did?

21 **A.** After washing breakfast dishes and stuff,
22 I proceeded to chopping watermelon and stuff like
23 that. I mean -- and I went out and cleaned
24 bathrooms and stuff is usually my routine after
25 breakfast. I go clean bathrooms.

1 And then I went back to the kitchen and
2 collected all the stuff that was supposed to go to
3 the sweat lodge -- the electrolyte water, lemon
4 water, plain water and -- in five-gallon jugs.

5 **Q.** Did you have help in the kitchen?

6 **A.** Yes, ma'am. Who all was there that day?
7 Kirsten Johnson, Cathy -- and I can't think of her
8 last name. Cathy, whatever her name is. I can't
9 remember her last name. Anyway, Sue Bello was in
10 there.

11 **Q.** And you're talking about in the kitchen?

12 **A.** Yeah. They were in the kitchen.

13 **Q.** And are you the crew that was preparing
14 the meals for the participants at Mr. Ray's
15 Spiritual Warrior event?

16 **A.** Yes.

17 **Q.** You mentioned chopping some watermelon.
18 I'm going to put up on the overhead Exhibit 282 and
19 just ask you if you recognize --

20 **A.** Yes, ma'am.

21 **Q.** Did you have help chopping the fruit?

22 **A.** Oh, yeah. Everybody that was in the
23 kitchen was chopping fruit.

24 **Q.** And do you recall whose instructions it
25 was that you prepared this fruit?

1 **A.** That would be Kirsten Johnson, our head
2 chef.

3 **Q.** As the head chef, you were taking
4 directions from her?

5 **A.** Yes, ma'am.

6 **Q.** Were you part of getting the fruit down
7 to the site of the sweat lodge?

8 **A.** Yes, ma'am.

9 **Q.** How did you get it down there?

10 **A.** I put it in these chafer pans and put
11 covers on them and put them on my golf cart and
12 carried them down.

13 **Q.** Did you have help with that?

14 **A.** No, ma'am.

15 **Q.** And in terms of the timing, who were you
16 getting your instructions from?

17 **A.** That would have been probably Michael and
18 Amayra. At this point I don't remember. I kind of
19 take charge and do things. So yeah. Michael and
20 Amayra.

21 **Q.** And you mean Michael and Amayra Hamilton?

22 **A.** Yes, ma'am.

23 **Q.** You spoke also of the water. And I'm
24 going to put up on the overhead Exhibit 281. Does
25 that look familiar to you?

1 **A.** Yes, ma'am.

2 **Q.** Are you the one that filled these two
3 jugs?

4 **A.** No, ma'am. I did not fill them. I just
5 carried them down there.

6 **Q.** Do you know who filled them?

7 **A.** That would be Kirsten and Cathy in the
8 kitchen.

9 **Q.** And it was done in the kitchen at
10 Angel Valley?

11 **A.** Yes, ma'am.

12 **Q.** And one says, lemon water? One says,
13 electrolytes?

14 **A.** Yes, ma'am.

15 **Q.** Do you know what went in these jugs?

16 **A.** No, ma'am. I don't.

17 **Q.** Once you got the fruit and water and
18 electrolytes down to the site of the sweat lodge,
19 do you recall what time that was that you got the
20 stuff down there?

21 **A.** That was about 1:30, quarter to 2:00,
22 somewhere around in there.

23 **Q.** Did you have other jobs to do to get the
24 sweat lodge set up?

25 **A.** No, ma'am.

- 1 Q. How about things like towels?
- 2 A. **Yes, I did. I brought two big baskets of**
- 3 **towels down there.**
- 4 Q. Okay. Did you observe the construction
- 5 of the sweat lodge?
- 6 A. **No, ma'am.**
- 7 Q. And when you first -- when did you first
- 8 realize that there would be a sweat lodge ceremony
- 9 in October of 2008?
- 10 A. **Before the group got there.**
- 11 Q. Once you got the towels and the water and
- 12 the fruit down there, what did you do?
- 13 A. **I just sat down and watched.**
- 14 Q. Did you have a specific role for this
- 15 ceremony?
- 16 A. **No, ma'am.**
- 17 Q. Did somebody tell you to stay at the
- 18 site?
- 19 A. **No, ma'am.**
- 20 Q. Why did you decide to sit there and
- 21 watch?
- 22 A. **Because my gut told me to.**
- 23 Q. I'm going to put up on the overhead
- 24 Exhibit 144 and ask if you recognize this.
- 25 A. **Yes, ma'am.**

- 1 Q. Do you see yourself in this picture?
- 2 A. **No, ma'am. This is when they were going**
- 3 **in. Was I there then? Well, yeah. That's me**
- 4 **right there walking.**
- 5 Q. There you are.
- 6 A. **I'm looking at the line.**
- 7 Q. You can look at your monitor.
- 8 A. **Oh.**
- 9 Q. And you can actually draw on the monitor
- 10 to point out to the jury where you just found
- 11 yourself.
- 12 A. **Right here.**
- 13 Q. Okay. And do you remember when the
- 14 participants lined up outside?
- 15 A. **Timewise or --**
- 16 Q. Just do you remember the incident itself?
- 17 A. **Yes, ma'am.**
- 18 Q. Do you have any idea where you were
- 19 walking or what you were doing in this picture?
- 20 A. **Yes, ma'am. I had -- over here on**
- 21 **this -- you can't see it. Right here there was**
- 22 **a -- they had gathered around and burnt some**
- 23 **letters and stuff that they had. The papers were**
- 24 **flying everywhere.**
- 25 **And so I was putting out papers so we**

- 1 **wouldn't have a bigger issue. And that's where I**
- 2 **was when I was walking. I had just got through**
- 3 **doing that.**
- 4 Q. Were you within listening distance when
- 5 the group gathered and put the papers in the fire?
- 6 A. **No, ma'am. I was not.**
- 7 Q. And when you tried to contain the papers,
- 8 was that because there was a breeze?
- 9 A. **Yes -- well, a light breeze. Yes, ma'am.**
- 10 Q. Did you ever get sick after having been
- 11 near that fire and --
- 12 A. **No, ma'am.**
- 13 Q. -- gathering the papers?
- 14 Do you recall what you did, Ms. Foster,
- 15 after the participants went inside the sweat lodge?
- 16 A. **I went over and sat down right here on**
- 17 **this log.**
- 18 Q. Okay. I'm going to put up -- we might
- 19 come back to this picture. But for now I want to
- 20 put up Exhibit 145 and ask if you recognize this
- 21 picture.
- 22 A. **Well, I recognize what it is and what --**
- 23 **yeah.**
- 24 Q. Do you recognize the people in the
- 25 picture?

- 1 A. **Yes, ma'am.**
- 2 Q. Will you point to and tell the jury who
- 3 it is that you recognize.
- 4 A. **I believe this is Debbie Mercer. This is**
- 5 **Ted Mercer. And I'm not sure who these other**
- 6 **people are. They're part of the Dream Team, but I**
- 7 **don't know their names.**
- 8 Q. Okay. And you just used the term "Dream
- 9 Team." Where did you hear that term?
- 10 A. **From the James Ray group.**
- 11 Q. Were you around earlier in the week? Or
- 12 how is it that you're familiar with the term "Dream
- 13 Team"?
- 14 A. **I was there the whole week. I was there**
- 15 **before they got there and set all the tents and**
- 16 **everything up before they -- yeah.**
- 17 Q. Okay. And were you in -- did you have
- 18 interaction with the Dream Team?
- 19 A. **Very little.**
- 20 Q. Did you have interaction with Mr. Ray?
- 21 A. **Other than hello, not really. No.**
- 22 Q. You said to the jury that this is Debbie?
- 23 A. **Uh-huh.**
- 24 Q. And that's Debbie Mercer?
- 25 A. **Yes, ma'am.**

1 Q. Do you know what her role at this event
2 was?
3 A. **She was helping tend the fire.**
4 Q. And you said this is Ted. Is that Ted
5 Mercer?
6 A. **Yes, ma'am.**
7 Q. Do you know what his role was?
8 A. **He was tending the fire as well.**
9 Q. And they're husband and wife?
10 A. **Yes, ma'am.**
11 Q. Did you observe what the Mercers did to
12 tend the fire? What does that mean?
13 A. **They were -- basically, when you do -- I**
14 **didn't see them do it. But what happens --**
15 MR. KELLY: Your Honor, objection. After "I
16 didn't see them do it," I request it be stricken.
17 THE COURT: You didn't get past that really.
18 Sustained.
19 Q. BY MS. POLK: Okay. And we'll talk about
20 your experiences with other sweat lodges --
21 A. **Okay.**
22 Q. -- later. You had told the jury once the
23 participants got in, you found a log and you sat on
24 it. Do you see it in this picture?
25 A. **No, ma'am.**

1 Q. Well, let's go back to --
2 A. **It's just right here on this side**
3 **right -- just past that picture.**
4 Q. Okay. I'm going to put up back on the
5 overhead Exhibit 144.
6 Does that have the log in it?
7 A. **Yes, ma'am. Right here.**
8 Q. Let me see if I can zoom in so you can
9 identify it. Is this the log right here that you
10 sat on?
11 A. **Yes, ma'am.**
12 Q. How long did you sit there, Ms. Foster?
13 A. **Almost through the entire ceremony.**
14 Q. Did you ever get up from that log?
15 A. **Yes, ma'am. I did. I got up to go to**
16 **the kitchen to get a bucket of ice water to put a**
17 **gentleman's arm in that got burnt. And I got up**
18 **several times to help people that had come out, get**
19 **them water and stuff like that.**
20 Q. Okay. What do you think happened first
21 in terms of going to get the ice water versus
22 helping participants when you -- getting up to help
23 participants?
24 A. **First I was getting up to help three**
25 **participants that came out after the first round.**

1 **I got them glasses of water and stuff --**
2 **watermelon, whatever they could -- you know --**
3 **wanted. And same thing with the next three that**
4 **came out.**
5 Q. Okay. And let's go back to the pictures
6 that we had put up. Are you familiar with the term
7 "comfort station"?
8 A. **Yes.**
9 Q. Did you -- do you recognize that as a
10 term used for where this water and the -- so for
11 participants who came out early, tell the jury what
12 you did for them.
13 A. **I went over to the comfort station and**
14 **got electrolyte water or lemon water, whichever one**
15 **they wanted, and brought them back glasses of**
16 **water. And if they wanted a piece of watermelon or**
17 **orange, I'd get them a piece of that.**
18 Q. Do you know if any of those participants
19 who came out early went back in the sweat lodge?
20 A. **The first three, no. They did not. The**
21 **second three came out. They did not go back in.**
22 **One lady in a bathing suit tried to go back in**
23 **several times and chose not to. And at one point,**
24 **they were trying to kind of nudge her back in. And**
25 **we said, no. You can't. You know -- if she**

1 **doesn't want to go, don't make her.**
2 Q. For those who came out early and you gave
3 them water or fruit from the comfort station, for
4 those who did not go back in, did you ever notice
5 whether or not they got sick or reacted in any way
6 to the water or fruit that you gave them?
7 A. **No. They didn't have any adverse**
8 **reaction to the fruit or water that I noticed. I**
9 **mean, they weren't feeling real well when they came**
10 **out. They were hot.**
11 Q. They were hot. Did you also help cool
12 them down?
13 A. **Yes, ma'am.**
14 Q. How?
15 A. **Water hoses, wet towels.**
16 Q. And were you part of that yourself? Were
17 you a hoser?
18 A. **Not until everybody came out. No, ma'am.**
19 Q. Later?
20 A. **Once everybody came out, yes, ma'am.**
21 Q. Do you recall, Ms. Foster, what time the
22 ceremony started?
23 A. **I want to say around 2:30.**
24 Q. Why do you say that?
25 A. **Well, because of the time frame. I took**

1 the water and stuff over and then left and went
2 back to the kitchen to get the last of the stuff.
3 And by the time I came back, they were -- you know,
4 had already burnt their letters and were going in.
5 So around 2:30.

6 Q. Did you have a watch on?

7 A. I don't wear a watch. No, ma'am. I'm
8 guessing at the time.

9 Q. Did you track, Ms. Foster, the rocks that
10 were being heated in the fire?

11 A. Did I -- I'm sorry?

12 Q. That was a bad choice of words. Did you
13 pay attention to the heating of the rocks in the
14 fire?

15 A. Not really.

16 Q. And you talked earlier about Mr. Mercer,
17 Ted Mercer, was a fire tender. I'm going to put up
18 on the overhead Exhibit 552. Do you know if that's
19 the fire where the rocks are being heated?

20 A. Yes, ma'am.

21 Q. And do you know the rule about the role
22 of rocks in a sweat lodge ceremony?

23 A. Yes, ma'am.

24 Q. Do you have any knowledge about the
25 number of rocks that Mr. Mercer was heating?

1 A. No, I did not. I just know at one point
2 I counted 18 rocks that went in. And it just
3 seemed like an astronomical amount to me.

4 Q. Describe for the jury, if you would, the
5 process of how a hot rock gets from the fire into a
6 sweat lodge.

7 A. The wood is moved with a pitchfork. The
8 rock is picked up on a pitchfork, and it is
9 transferred into the -- you slide it through the
10 door. And then whoever is inside takes the shovel
11 and drops it in the pit and brings it back -- puts
12 it back out the door. And Debbie or Ted, whichever
13 one, would take the shovel -- the pitchfork back
14 out.

15 Q. Is that done one rock at a time?

16 A. Yes, ma'am.

17 Q. For the fire tenders, then, how close
18 would they get to the fire in order to pull the hot
19 rocks out?

20 A. As close as the length of a pitchfork or
21 shovel.

22 Q. Did you ever observe -- did you observe
23 Ted Mercer as he tended the fire?

24 A. Yes, ma'am.

25 Q. Was he the one who pulled the rocks out

1 of the fire?

2 A. Yes, ma'am.

3 Q. Do you know how -- once the rock got
4 pulled out who it was that took it over to the
5 tent?

6 A. I saw both Ted and Debbie take them over
7 to the tent.

8 Q. Do you know, Ms. Foster, how it was
9 determined for Mr. Ray's sweat lodge ceremony how
10 many rocks were to be brought in?

11 A. That was determined -- Mr. Ray would ask
12 for the number of rocks he wanted, I assume.
13 That's my assumption.

14 Q. Did you have to --

15 MR. KELLY: Objection. Lack of foundation.

16 THE COURT: Sustained.

17 Q. BY MS. POLK: And I'll clear that up.

18 Did you ever hear Mr. Ray ask for the number of
19 rocks?

20 A. No, ma'am. I didn't.

21 Q. Okay. Then you made an assumption. What
22 is that assumption based on?

23 A. That assumption is years of doing sweats.
24 And whoever is leading the sweat calls for the
25 number of rocks.

1 Q. You used the words yourself "astronomical
2 number of rocks."

3 A. Because every lodge I have ever been
4 in --

5 MR. KELLY: Your Honor, objection.

6 THE COURT: Sustained.

7 Q. BY MS. POLK: And I'll ask the question.
8 I was just trying to frame the question. For the
9 sweat lodges that you've been in, how many rocks
10 have been brought in per round --

11 A. Four to five rocks per round.

12 MR. KELLY: Your Honor, objection.

13 THE COURT: The initial objection is
14 sustained.

15 Q. BY MS. POLK: Let's talk first about,
16 then, the early participants who came out. When
17 they first came out, do you remember where you
18 were?

19 A. Sitting on the log.

20 Q. And tell the jury what you observed about
21 the early participants who came out. And let me
22 clarify. When I use the term "earlier" and you use
23 the term "early," do you know what round we're
24 talking about?

25 A. The first round.

1 Q. Okay. Tell the jury what specifically
2 that you observed about those early participants.

3 A. **As they were coming out, the Dream Team**
4 **was putting their hands on their back and keeping**
5 **them on the ground and telling them not to stand up**
6 **because they didn't want them to pass out -- stand**
7 **up and pass out. And so they kept them low.**

8 Q. And they were cooled?

9 A. **Yes.**

10 Q. Okay. And do you remember -- you talked
11 about three people coming out. What do you
12 remember next?

13 A. **Those two -- there was a man and two**
14 **women. They came out and sat down on the tarp**
15 **right next to the tent right here. And the man and**
16 **the woman sitting on the tarp were okay, not too**
17 **shaky.**

18 **There was another lady that sat down in**
19 **the chair right over here. And she was having a**
20 **hard time, really shaky, and just needed some water**
21 **and some electrolytes quickly.**

22 Q. Are you the one who got that for her?

23 A. **Yes, ma'am. Then I just talked her**
24 **through it and had to get her to breathe, take some**
25 **deep breaths and calm yourself down. She was a**

1 **little rattled. And then after that the flap was**
2 **closed and they went into the second round.**

3 Q. During the time that the flap was open,
4 could you hear any voices from inside the sweat
5 lodge?

6 A. **At that time, no. I was busy with those**
7 **people.**

8 Q. Did you ever hear of people encouraged to
9 come back in?

10 A. **Yes, ma'am.**

11 Q. When did you hear that?

12 A. **Almost every time somebody came out.**
13 **Every time the flap was opened, they were**
14 **encouraged to come back in and push past that they**
15 **weren't their bodies. They were more than their**
16 **bodies. And come on back in. They could do it.**

17 Q. Who did you hear saying those words of
18 encouragement?

19 A. **James Ray and several other people in the**
20 **lodge that I can't identify.**

21 Q. Did you hear Mr. Ray on more than one
22 occasion tell people they were more than their
23 bodies?

24 A. **Yes, ma'am.**

25 Q. How many occasions would you say?

1 A. **Oh, gosh. At least 20.**

2 Q. Twenty?

3 A. **At least.**

4 Q. When that -- when the door to the sweat
5 lodge would open, could you see Mr. Ray from your
6 position?

7 A. **Yes, ma'am.**

8 Q. I'm going to put up on the overhead
9 Exhibit 414. Tell the jury where you would be able
10 to see Mr. Ray between rounds.

11 A. **This is the entrance. Mr. Ray was right**
12 **here -- somewhere right in here. And I was over**
13 **here on this log. I had a direct shot.**

14 Q. At the end of the second round, tell the
15 jury what you observed in terms of participants.

16 A. **Three more people came back out. One was**
17 **the lady in the white bathing suit.**

18 Q. And let me stop you there. Why are you
19 specifically remembering a lady in a white bathing
20 suit?

21 A. **Because it troubled me.**

22 Q. And tell the jury what troubled you.

23 A. **Them trying to push her back into the**
24 **lodge when she didn't want to go.**

25 Q. Tell the jury about what you saw, then,

1 with respect to the lady in the white bathing suit
2 who had come out after the second round.

3 A. **She came out and cooled off, calmed down**
4 **a little bit, got some water in her, and several**
5 **times thought she might want to go back in.**

6 Q. Was she being encouraged to go back in?

7 A. **Oh, yeah.**

8 Q. And by whom?

9 A. **Well, again, everybody -- different**
10 **people in the lodge saying, you're not your body.**
11 **You know, you can get past this. You can do it.**
12 **And I didn't -- she wanted to, but she didn't want**
13 **to. Something was not right for her.**

14 Q. What did you see her do?

15 A. **I saw her head towards and back up, head**
16 **towards and back up. And then she got to the door**
17 **at one point, and they were trying to push her back**
18 **in. And I heard Debbie Mercer say, don't do that.**
19 **You can't push her back -- you can't make her go.**

20 Q. Who is they? Who was trying to push this
21 lady back in?

22 A. **The Dream Team.**

23 Q. And in terms of this exhibit, how close
24 to the flap was she when that was happening?

25 A. **She was right at the door.**

1 Q. Do you recall where Mr. Ray was when the
2 Dream Team members were trying to push her back in?
3 MR. KELLY: Your Honor, objection.
4 THE WITNESS: Inside the door.
5 MR. KELLY: Lack of foundation.
6 THE COURT: Overruled.
7 Q. BY MS. POLK: You can tell the jury.
8 Where was Mr. Ray when the Dream Team members were
9 trying to push this lady back in?
10 A. **Sitting inside --**
11 MR. KELLY: Object to the form of the
12 question. Blocking the door. She has no idea
13 where Mr. Ray is.
14 THE COURT: This is -- form of the question at
15 this time.
16 Please phrase a question, Ms. Polk.
17 Q. BY MS. POLK: Where was Mr. Ray when you
18 observed what you have just described for the jury?
19 A. **Sitting inside the sweat lodge.**
20 Q. Did you see him -- or did you hear him
21 say anything to the Dream Team members?
22 A. **No, ma'am. I did not.**
23 Q. Did you see him interact with this lady
24 that was at the door?
25 A. **No, ma'am.**

1 Q. Did you see him try to stop the pushing
2 of this lady into the sweat lodge?
3 A. **No, ma'am.**
4 MR. KELLY: Your Honor, I'm going to object.
5 Request the last question and answer be stricken
6 based on discussions regarding omission.
7 THE COURT: Ladies and gentlemen, once again,
8 what the attorneys phrase in a question is not in
9 evidence. So listen to the questions carefully.
10 Listen to the testimony carefully. And don't
11 consider what the attorneys said as evidence if you
12 believe it is incorrect and not accurately stating
13 what was previously testified to.
14 Ms. Polk, you may continue.
15 MS. POLK: Thank you, Your Honor.
16 Q. You mentioned that Debbie Mercer was in
17 the area when that incident with the lady in the
18 white bathing suit was going on. What did you see
19 Debbie Mercer do?
20 A. **I didn't see her do anything. I heard**
21 **her say -- I know Debbie very well. She's a good**
22 **friend of mine. And I know her voice. She was**
23 **standing right here.**
24 Q. What did you hear Debbie say?
25 A. **She said, no. Don't push her in. You**

1 **can't do that.**
2 Q. Then what happened?
3 A. **And then they backed off of her. And the**
4 **lady backed out and left and didn't come back.**
5 Q. Did you see where the lady left to?
6 A. **No, ma'am.**
7 Q. When you say she left, do you mean --
8 A. **She went back to her cabin.**
9 Q. Okay. Left the area?
10 A. **Yes, ma'am.**
11 Q. Did you ever see that lady again that
12 night?
13 A. **No, ma'am.**
14 Q. You mentioned leaving at some point to
15 get some ice water?
16 A. **Yes, ma'am.**
17 Q. Do you recall when that was?
18 A. **It was right when the -- like, the**
19 **gentleman had fallen into the fire -- or had fallen**
20 **into the hot rocks.**
21 Q. How did you become aware, Ms. Foster,
22 that someone had fallen into the hot rocks?
23 A. **Well, first I heard somebody inside say**
24 **he fell into the fire. And when he came out, his**
25 **hand was burnt all the way up to here.**

1 Q. Where were you when this gentleman came
2 out?
3 A. **I was sitting on the log when he came**
4 **out.**
5 Q. Okay. And you just used the words "you
6 heard someone say, he fell into the fire." To your
7 knowledge, was there ever a fire inside --
8 A. **No, ma'am.**
9 Q. -- Mr. Ray's sweat lodge?
10 A. **No, ma'am.**
11 Q. Describe for the jury the man -- what you
12 observed about the man's body when he came out --
13 or -- I'm getting ahead of myself. You heard
14 somebody shout out something. You were where?
15 A. **I was still sitting on the log.**
16 Q. And was the flap open -- the flap to the
17 sweat lodge, the door -- was it open?
18 A. **To be honest, I don't remember.**
19 Q. Okay. Could you see anything at that
20 time inside the sweat lodge?
21 A. **No, ma'am. I don't remember. I really**
22 **don't.**
23 MR. KELLY: Your Honor -- strike that.
24 Q. BY MS. POLK: After hearing somebody call
25 out, what were you next aware of?

1 **A. I was next aware of -- in fact, my next**
 2 **memory is him coming out of the lodge.**
 3 **Q.** Do you recall how he got out of the
 4 lodge?
 5 **A. He crawled out.**
 6 **Q.** Do you recall if there was anybody with
 7 him?
 8 **A. Somebody was helping him out.**
 9 **Q.** Okay.
 10 **A. I don't know who.**
 11 **Q.** And do you know how much time passed from
 12 the time you heard voices call out and seeing this
 13 gentleman come out?
 14 **A. Maybe a minute. I mean, it was like**
 15 **that.**
 16 **Q.** It was relatively right away --
 17 **A. It was relatively quick. Yes, ma'am.**
 18 **Q.** Describe for the jury, then, what you
 19 observed about the man's body.
 20 **A. He was severely burned on his arm. It**
 21 **had already blistered up.**
 22 **Q.** If you will just show us on your own arm.
 23 What part of the arm did you see burned?
 24 **A. His hand, his fingers, and all this right**
 25 **here was burnt.**

1 **Q.** And you just used the word "blisters."
 2 What did you see?
 3 **A. It was already bubbled. And one of the**
 4 **Dream Team members grabbed a towel to wrap around**
 5 **it. And I hollered at her, no. Don't do that.**
 6 **You don't do that to a burn.**
 7 **Q.** How did you know that, Ms. Foster?
 8 **A. Because I have children, and I've read**
 9 **first-aid books. You just don't do that.**
 10 **Q.** What do you believe the appropriate
 11 treatment for a burn might be?
 12 **A. You cool it off. You get it in water,**
 13 **get it in something cold. So that's what I did. I**
 14 **ran to the kitchen and got a five-gallon bucket**
 15 **with ice and water so he could put his arm in it.**
 16 **Q.** And you just said, ran?
 17 **A. Well, drove, cart.**
 18 **Q.** Okay. I'm going to put up on the
 19 overhead a map that's Exhibit 140. Let's see if we
 20 can get some distances. Do you see on here where
 21 the sweat lodge structure is?
 22 Do you want me to bring this up to you so
 23 you can look at it first? Would that be better?
 24 **A. I can see it now.**
 25 **Q.** Okay. Can you circle where you see the

1 sweat lodge, for the jury, and show them where the
 2 kitchen is.
 3 What is the path you take, then, with
 4 your golf cart to get from the sweat lodge to the
 5 kitchen?
 6 **A. That would be --**
 7 **Q.** About how long does that take?
 8 **A. About two and a half minutes.**
 9 **Q.** Once you returned with the bucket of ice
 10 water, what did you do?
 11 **A. I went straight to him and put his arm in**
 12 **it.**
 13 **Q.** Did he still have the towel wrapped
 14 around it?
 15 **A. No. She didn't put the towel around it**
 16 **when I told her don't do that.**
 17 **Q.** Do you know the name of the Dream Team
 18 member who had originally put the arm in a towel?
 19 **A. No, ma'am. I don't.**
 20 **Q.** Did you observe anything else about that
 21 man's condition?
 22 **A. He appeared to be out of it.**
 23 **Q.** And describe for the jury specifically
 24 what you saw that makes you use those words.
 25 **A. Well, he was -- you get a burn like that,**

1 **you're going to feel it. You should be hollering.**
 2 **That's just my opinion.**
 3 MR. KELLY: Your Honor, objection as to the
 4 opinion nature of the response. The question is
 5 what did you observe?
 6 THE COURT: That was the question, Ms. Polk.
 7 So, please, if you could restate the question.
 8 And then, Ms. Foster, listen carefully to
 9 the question and answer what the attorney is asking
 10 you. Okay?
 11 THE WITNESS: Yes.
 12 THE COURT: Please go ahead, Ms. Polk.
 13 **Q.** BY MS. POLK: What did you observe about
 14 the man who had burned his arm?
 15 **A. He wasn't coherent.**
 16 MR. KELLY: Your Honor, objection.
 17 THE WITNESS: He couldn't tell me who he was.
 18 THE COURT: Overruled.
 19 **Q.** BY MS. POLK: Okay. Keep going.
 20 **A. He couldn't tell me who he was in that**
 21 **moment. He kept asking me -- I kept asking him if**
 22 **he was okay. Yeah. I'm fine. I want to go -- I'm**
 23 **fine. He just -- he acted like he was in shock to**
 24 **me.**
 25 **Q.** Did you ever learn whether there was a

1 nurse onsite for this sweat lodge ceremony?
 2 **A. The lady said she was a nurse.**
 3 **Q.** And what lady are we talking about?
 4 **A. The lady that tried wrapping a towel**
 5 **around his arm.**
 6 **Q.** Okay. When was it that she said she was
 7 a nurse?
 8 **A. She said -- when she came out, she said,**
 9 **I'm a nurse. I'll take care it. And that's not**
 10 **what happened. I at that point didn't think she**
 11 **was a nurse.**
 12 **Q.** Okay.
 13 **A. Common sense says don't put a towel on a**
 14 **burn.**
 15 **Q.** And going back, then, to the gentleman,
 16 how long did you stay with him?
 17 **A. Ten minutes, maybe fifteen minutes.**
 18 **Q.** Did you keep his arm in the bucket the
 19 whole time?
 20 **A. Yes, ma'am.**
 21 **Q.** And how was he doing?
 22 **A. And long after I walked away from him.**
 23 **Q.** Let me ask you that question. Did you,
 24 then, leave that gentleman while his arm was still
 25 in the bucket?

1 **A. Yes.**
 2 **Q.** To go do what?
 3 **A. I just stepped back out of the -- there**
 4 **were other people there with him.**
 5 **Q.** Do you know who those other people were
 6 that were with him?
 7 **A. They were just part of the Dream Team. I**
 8 **don't remember their names.**
 9 **Q.** Did you ever observe whether this
 10 gentleman went back into the sweat lodge?
 11 **A. Yes, ma'am, he did.**
 12 **Q.** When did you see that happen?
 13 **A. I don't remember what round it was.**
 14 **Q.** How did you become aware that he was
 15 going back into the sweat lodge?
 16 **A. I just watched him go back in.**
 17 **Q.** Did you say anything to him at that time?
 18 **A. No, ma'am. I did not.**
 19 **Q.** And what did you -- if anything, what did
 20 you observe about his arm when he went back in?
 21 **A. That at that point it was not blistered**
 22 **because there was no skin on it.**
 23 **Q.** What do you mean?
 24 **A. The skin had come -- you know, it was**
 25 **rolled over. It was just raw.**

1 **Q.** Did that -- did you ever have a further
 2 interaction with that gentleman?
 3 **A. Yes, ma'am. When he came out of the**
 4 **lodge at the end.**
 5 **Q.** At the very end of the ceremony?
 6 **A. At some point he came to me and thanked**
 7 **me for telling him to go back in.**
 8 **Q.** And what did you say?
 9 **A. I never said anything to him.**
 10 **Q.** Had you told him to go back in?
 11 **A. No.**
 12 **Q.** And yet he thanked you for telling him to
 13 go back in?
 14 **A. Yes, ma'am.**
 15 **Q.** What did you observe about his condition
 16 then?
 17 **A. He seemed to be on the top of the world,**
 18 **excited.**
 19 **Q.** Did you observe after that little
 20 conversation where he went or what happened to him?
 21 **A. No, ma'am.**
 22 **Q.** Did there come a time toward the end --
 23 well, let's continue to talk about the middle of
 24 the round around the time of this gentleman. Did
 25 you become aware of other people coming out of the

1 sweat lodge?
 2 **A. Yes, ma'am. There was one gentleman**
 3 **laying on the floor. I don't remember -- on the**
 4 **ground. I don't remember what round it was. But**
 5 **he was hollering and screaming saying he was dying**
 6 **and --**
 7 **Q.** Did you observe anything being done for
 8 the man who was screaming he was dying?
 9 **A. One lady -- one of the Dream Team members**
 10 **said she was a doctor, was taking care of him. At**
 11 **that point the flap was open. And I heard James**
 12 **Ray say to this gentleman, you're not going to die.**
 13 **You're going to be all right.**
 14 **Q.** Where were you, Ms. Foster, when you
 15 heard Mr. Ray say that?
 16 **A. I was sitting on the log. I was with**
 17 **this gentleman when the lady walked up and said,**
 18 **I'm a doctor. I backed up because I'm not a**
 19 **doctor. And so I went and sat back down and got**
 20 **out of the way.**
 21 **Q.** Where was Mr. Ray when you heard him say,
 22 you will be okay -- what did you hear Mr. Ray say?
 23 **A. That you're going to be okay. You're not**
 24 **going to die. You're going to be okay.**
 25 **Q.** And where was Mr. Ray when he said that?

1 **A. Sitting inside the lodge.**
 2 **Q.** Did you ever see Mr. Ray come out of the
 3 sweat lodge before the ceremony was over?
 4 **A. No, ma'am.**
 5 **Q.** Did you ever see him come out to check up
 6 on any of the people you've just testified about?
 7 **A. No, ma'am.**
 8 **Q.** So the words that you will be okay,
 9 you're not going to die -- how was it that from the
 10 inside he was able to speak to somebody who was
 11 outside?
 12 **MR. KELLY:** Your Honor, objection.
 13 **THE COURT:** Overruled.
 14 You may answer that if you can.
 15 **Q.** BY MS. POLK: I just put back up on the
 16 overhead Exhibit 414, which is a simple diagram.
 17 **A. And right. We assume that the log is**
 18 **down here.**
 19 **Q.** Okay.
 20 **A. This gentleman was laying right here on a**
 21 **tarp.**
 22 **Q.** And where was Mr. Ray?
 23 **A. Right inside the door there.**
 24 **Q.** Did you see how that man reacted when
 25 Mr. Ray told him he was fine, he wouldn't die?

1 **A. I don't believe he was hearing Mr. Ray at**
 2 **all.**
 3 **MR. KELLY:** Your Honor, objection.
 4 **THE COURT:** The question is sustained as
 5 nonresponsive.
 6 **Ms. Polk.**
 7 **Q.** BY MS. POLK: What did you observe about
 8 the man on the ground and his condition?
 9 **A. That he thought he was going to die.**
 10 **MR. KELLY:** Your Honor, objection. Ask that
 11 the answer be stricken.
 12 **THE COURT:** Again, sustained.
 13 **Q.** BY MS. POLK: What did you hear the man
 14 say?
 15 **A. Help me. I'm dying. Help me. I'm**
 16 **dying.**
 17 **Q.** Did you observe what happened to that man
 18 over time?
 19 **A. He eventually calmed down. As I said,**
 20 **the nurse or doctor, whoever she was, was working**
 21 **with him. And at that point the flap was closed.**
 22 **And one of the Dream Team members, the curly-haired**
 23 **lady, came and got the lady that was with this man**
 24 **and said, come on. We have to hold the energy**
 25 **around the tent, which was just is weird. But --**

1 **Q.** And where were you?
 2 **A. I was still sitting on the log at that**
 3 **point.**
 4 **Q.** What do you remember happening next?
 5 **A. That gentleman was before the man that**
 6 **got burned.**
 7 **Q.** Okay.
 8 **A. So the next major thing was the gentleman**
 9 **getting burned.**
 10 **Q.** And, Ms. Foster, you left the scene to go
 11 get the ice water for the man who had been burned.
 12 And when you came back, did you get a chance, then,
 13 to observe generally what was going on outside the
 14 sweat lodge once you returned with the ice water?
 15 **A. Generally, what was going on outside the**
 16 **lodge was this gentleman was still laying there.**
 17 **There were a couple of people sitting over here**
 18 **somewhere, and then, of course, this gentleman**
 19 **here. And then I believe the gentleman that got**
 20 **burned was sitting right here on the tarp.**
 21 **Actually --**
 22 **Can we erase these marks?**
 23 **Q.** Yes.
 24 **A. The gentleman that got burned was sitting**
 25 **here on the tarp. And there was a couple of people**

1 **over here. Ted and Debbie were over here**
 2 **somewhere. There was a Dream Team member here, one**
 3 **here, one here, one here.**
 4 **And then I came from this direction with**
 5 **the bucket of water. And there was another man**
 6 **here. That's what I remember.**
 7 **Q.** Do you have any recollection today as to
 8 how many participants were outside of the sweat
 9 lodge when you came back with the ice water?
 10 **A. Specifically, no.**
 11 **Q.** And how about a rough estimate?
 12 **A. I want to say -- six is the number coming**
 13 **to mind. Six or seven.**
 14 **Q.** Did there come a time when you became
 15 concerned?
 16 **A. Many times.**
 17 **Q.** When was the first time you got
 18 concerned?
 19 **A. The first time was when they were trying**
 20 **to push this young lady back in. The second time**
 21 **was when this gentleman was hollering, I'm going to**
 22 **die. And this doctor walks away from him to hold**
 23 **the energy.**
 24 **The third time was when this gentleman**
 25 **comes out burned like that, and somebody tries to**

1 **wrap a towel around his arm. So many times I**
 2 **became concerned.**
 3 **Q.** And then after that gentleman with the
 4 burned arm, did something else -- did you observe
 5 something else that concerned you?
 6 **A. Other than when everybody came out and**
 7 **dropped like flies, yeah.**
 8 **Q.** And before we talk about the end of the
 9 ceremony. Before the end of the ceremony, could
 10 you hear voices from the inside?
 11 **A. Oh, yes, ma'am. It was next to the last**
 12 **round. I heard somebody inside say, there is three**
 13 **people down back here. And I heard --**
 14 **Q.** Are those the words that you heard
 15 specifically? There is three people down?
 16 **A. Yeah.**
 17 **Q.** Was that a male or a female voice?
 18 **A. It was a male voice.**
 19 **Q.** Okay. And then did you hear anybody
 20 respond to that?
 21 **A. I heard James Ray say, are they**
 22 **breathing? And I did not hear the answer to that.**
 23 **And then I heard James Ray say, leave them there.**
 24 **We have one more round.**
 25 **Q.** Did that concern you?

1 **A. Yeah.**
 2 **Q.** Where were you when you heard that?
 3 **A. I was sitting on the log.**
 4 **Q.** Since it concerned you, did you consider
 5 stopping the ceremony?
 6 **A. No, ma'am.**
 7 **Q.** And why not?
 8 **A. Because James Ray was in charge, and he**
 9 **was the leader. And I believe that if there was a**
 10 **problem, he would have gotten them out of there.**
 11 **Q.** Do you recall if the door to the sweat
 12 lodge was opened or closed when you heard that
 13 conversation you just --
 14 **A. It was open.**
 15 **Q.** It was open. And where were you?
 16 **A. Sitting on the log.**
 17 **Q.** Did you observe whether or not anybody
 18 was brought out after that conversation you heard?
 19 **A. No, ma'am. Nobody came out.**
 20 **Q.** And what happened next?
 21 **A. The flap was closed, and the last round**
 22 **started.**
 23 **Q.** Did you hear anything during the last
 24 round?
 25 **A. Other than James Ray telling these people**

1 **that they were not their bodies and that they**
 2 **were -- and that they were stronger than that and**
 3 **that they were going to make it through it and that**
 4 **they were -- would be considered -- they would be**
 5 **shamans at this point. Yeah.**
 6 **Q.** Where were you when you heard -- where
 7 were you during the last round?
 8 **A. Sitting on the log.**
 9 **Q.** Were you on that log when Mr. Ray ended
 10 his sweat lodge ceremony?
 11 **A. Yes, ma'am.**
 12 **Q.** And describe for the jury what you first
 13 saw when the ceremony was over. The door opens --
 14 **A. The door opens. Several people came out.**
 15 **Q.** Who came out first?
 16 **A. I don't know.**
 17 **Q.** Did you become aware of Mr. Ray coming
 18 out?
 19 **A. Yes, ma'am. He came out, but not first.**
 20 **Q.** Okay. Where were you when you saw
 21 Mr. Ray?
 22 **A. Standing by the log.**
 23 **Q.** And what did you see him do?
 24 **A. He came out and raised his arms and said,**
 25 **hose me down.**

1 **Q.** Did he get hosed down?
 2 **A. Yes.**
 3 **Q.** And was that what other participants did,
 4 raise their arms --
 5 **A. No.**
 6 **Q.** -- to get hosed down?
 7 **A. No, ma'am. Everybody else came out and**
 8 **hit the ground, and they were all --**
 9 **Q.** And what do you mean hit the ground?
 10 **A. Well, they didn't get -- they were**
 11 **crawling out of the lodge. And they got as far as**
 12 **they could get and fell everywhere. I've never**
 13 **seen anything like it in my life.**
 14 **Q.** Well, did you see where Mr. Ray went
 15 after he got hosed down?
 16 **A. Yes, ma'am. He walked over to -- well,**
 17 **let me back that up a little bit. He's getting**
 18 **hosed down. And I heard -- at that point I heard**
 19 **Debbie say -- she looked in the lodge and said, we**
 20 **have three people still in here. Can I open the**
 21 **back of the lodge?**
 22 **And James Ray said, that would be**
 23 **sacrilegious. He said, but go ahead and do it if**
 24 **you have to. At that point Debbie was already**
 25 **ripping the lodge open.**

1 Q. All right. And let me just back you up a
2 little bit. After Mr. Ray got hosed off, were you
3 aware of what he did or where he went?

4 A. Yes, ma'am. He walked over -- he walked
5 over to the end of the tarps.

6 Q. I'm going to put back up on the overhead
7 Exhibit 552.

8 Your Honor, the state moves to admit
9 Exhibit 552.

10 THE COURT: Mr. Kelly.

11 MR. KELLY: I have no objection.

12 THE COURT: 552 is admitted.

13 (Exhibit 552 admitted.)

14 Q. BY MS. POLK: Do you see on there where
15 Mr. Ray went after he came out of the sweat lodge?

16 A. He came out of the sweat lodge and went
17 over here. Over here were some more tarps, and
18 there were people laying on those. And I observed
19 him bend down and take a gentleman's hand. I don't
20 remember exactly what he said. Something to the
21 effect of good job.

22 And that's the last I remember seeing him
23 until everything was said and done, until I saw him
24 get out of a police car later that night.

25 Q. Did you ever see him collapse or crawl?

1 A. No, ma'am.

2 Q. His condition -- how would you describe
3 his condition when he came out?

4 A. He appeared to be fine.

5 Q. You -- what did you observe about the
6 other participants coming out?

7 A. They were laying on the ground, foaming
8 at the mouth. Some of them were screaming. Some
9 weren't moving at all. The people pulled out of
10 the lodge were blue. It was just ugly all the way
11 around. It was just --

12 Q. What did you do?

13 A. And what did I do? I was working with
14 the lady right -- she came outside the lodge. Her
15 name was Linda. I know her name now. I didn't
16 know it at the time. And I was working with her
17 trying to get her up off the ground and get her
18 back to her senses.

19 Q. And did you succeed?

20 A. Yes, ma'am.

21 Q. What did you next become aware of?

22 A. We were -- I was working with her. And
23 as soon as I got her sitting in a chair, I started
24 helping with other people.

25 Q. Doing what?

1 A. People were trembling and shaking and
2 doing things all over the place. So I pulled
3 blankets and stuff off the lodge to wrap them in
4 because they appeared to be going into shock to me.

5 Q. And I'm going to put up on the overhead
6 Exhibit 277.

7 First I'm going to move --

8 MR. KELLY: Your Honor, I have no objection to
9 277.

10 THE COURT: 277 is admitted.

11 (Exhibit 277 admitted.)

12 Q. BY MS. POLK: Do you recognize what's
13 shown in that photograph?

14 A. It's the back of the lodge.

15 Q. And you just said you were pulling
16 blankets off of the lodge?

17 A. Yes.

18 Q. When did you do that?

19 A. Not long after the lodge ended -- the
20 sweat ended. People were -- like I said, people
21 were laying everywhere, and they were being hosed
22 off. And they were wet, and they were shaking.
23 And so we were pulling -- this stuff in here is
24 blankets.

25 Q. Okay.

1 A. And so we were pulling those off to wrap
2 people in.

3 Q. Did people appear to be cold?

4 A. Yes, ma'am.

5 Q. What happened next?

6 A. The paramedics and everybody came.

7 Q. Well, let me back you up, then. I want
8 to talk about -- you briefly talked about it with
9 Debbie Mercer, and she called out for help. Let
10 me --

11 A. Oh. When she called -- when she asked if
12 she could open the back of the lodge?

13 Q. Yes. Where were you when you heard
14 Debbie say that?

15 A. I was -- this is the back of the lodge.
16 I was in the front of the lodge working with this
17 lady just before I got to Linda. I was on this
18 side hosing some people out -- down over here. And
19 the door is here. And Debbie was over here in the
20 back of the lodge.

21 Q. And let me put back up on the overhead
22 Exhibit 145. If you'll just show the jury where it
23 was that Debbie was.

24 A. Right back here where these people are.

25 Q. Okay. And what drew your attention to

1 Debbie?

2 **A. Her asking to -- could she rip open --**
3 **could she open the back of the lodge.**

4 **Q. And was she in that position over there**
5 **when she asked that?**

6 **A. No. Actually, she was over here -- she**
7 **just looked in the lodge.**

8 **Q. In the front?**

9 **A. Yes, ma'am. She just looked in the lodge**
10 **and turned. And James Ray was standing right here.**
11 **And she asked could she open the back of the lodge.**

12 **Q. And what did you hear Mr. Ray say?**

13 **A. He said, no. Well, that would be**
14 **sacrilegious. But go ahead if you need to. And as**
15 **he's answering, she already walked around over here**
16 **and was already pulling the lodge open.**

17 **Q. Okay. And what did you do?**

18 **A. I'm working with several people over here**
19 **in this area. And James Ray walked this way. And**
20 **I walked this way, bent down to help this lady that**
21 **was laying here.**

22 **And Debbie and Sue Ellen, which was --**
23 **who was a registered nurse, went over to help**
24 **Debbie with the two people she was taking out over**
25 **there.**

1 **Q. And when you heard Debbie ask Mr. Ray if**
2 **she could open up the back of the lodge, did she**
3 **say why?**

4 **A. She said, there's people down in here.**

5 **Q. Did you go over to the back of the lodge**
6 **that was being opened up?**

7 **A. Not in that moment. No, ma'am.**

8 **Q. Did you later?**

9 **A. Yes, ma'am.**

10 **Q. And I'm going to put back up on the**
11 **overhead Exhibit 227. Is this the back of the**
12 **lodge that you've been describing?**

13 **A. Yes, ma'am.**

14 **Q. Okay. When was it that you went over**
15 **there?**

16 **A. It was after -- to be honest, I never**
17 **walked completely over there.**

18 **Q. Okay.**

19 **A. I looked because I was down on the ground**
20 **with this lady -- with the one lady. And I looked**
21 **over there, and I could see both people laying**
22 **there with Sue Ellen and another lady -- I don't**
23 **know who she was -- working on them.**

24 **Q. Okay. Do you know how the people got**
25 **out?**

1 **A. To my knowledge, Debbie pulled them out.**

2 **Q. Did you see anybody else go over and help**

3 **Debbie?**

4 **A. No, ma'am. I was busy with the lady at**
5 **that point.**

6 **Q. When was it, then, that you had the**
7 **opportunity to look at the people who were pulled**
8 **out?**

9 **A. I could see them from where I was at**
10 **right over here. They were pulled out far enough**
11 **that I could look this way and see them from there.**

12 **Q. How many people did you see that had**
13 **been --**

14 **A. I could only see two people.**

15 **Q. And tell the jury what you observed about**
16 **those two people who had been pulled out.**

17 **A. Well, the gentleman that was laying**
18 **closest to me was completely blue. The other lady**
19 **appeared to have blue lips, but I couldn't see.**
20 **They were working on her, so I really couldn't see**
21 **her well.**

22 **Q. What did you do next?**

23 **A. I'm still working with this one lady.**
24 **And I got her up on her feet. And the paramedic**
25 **came over, and we got her undressed and got a**

1 **blanket on her. After the paramedics got there, I**
2 **just kind of stayed out of the way unless they**
3 **asked for something because I'm not a doctor. You**
4 **know. I'll just get out of the way and let**
5 **somebody that knows what they're doing do it.**

6 **I -- basically, when the police got**
7 **there, they said, everybody just stay -- you know.**
8 **Wait.**

9 **Q. The police said --**

10 **A. Just before -- let me back up a little**
11 **bit. Just before the ambulance and stuff were**
12 **coming down the hill, I heard James say, anybody**
13 **that can walk, go back to your rooms. Clear the**
14 **area.**

15 **Q. And when was that in terms of the arrival**
16 **of the ambulances?**

17 **A. As they were coming down the road to**
18 **come, it was right then.**

19 **Q. Had any of the ambulances arrived when**
20 **you heard Mr. Ray say that?**

21 **A. No, ma'am.**

22 **Q. And what did you hear him say?**

23 **A. I heard him say, anybody that can walk,**
24 **clear the area. Go back to your rooms.**

25 **MS. POLK: Your Honor, would this be a good**

1 time to take the break?

2 THE COURT: Yes. Thank you, Ms. Polk.

3 We will now take the morning recess,

4 ladies and gentlemen. Please be reassembled at 10

5 after. We'll start as soon as we can after that.

6 And, Ms. Foster, I wanted to remind you

7 that the rule of exclusion has been invoked in this

8 case. That means you cannot communicate with any

9 other witness about this case or your testimony

10 until the trial is completely over.

11 I think you had that explained to you.

12 THE WITNESS: Yes.

13 THE COURT: You can talk to the lawyers,

14 though, as long as no other witness is present.

15 Okay.

16 THE WITNESS: Okay.

17 THE COURT: You will be excused at this time

18 as well for the break.

19 We are in recess now. Thank you.

20 (Recess.)

21 THE COURT: The record will show the presence

22 of the defendant, Mr. Ray; the attorneys, the jury.

23 Ms. Foster has returned to the witness

24 stand.

25 And, of course, you're still under oath.

1 Ms. Polk.

2 MS. POLK: Thank you, Judge.

3 Q. Ms. Foster, do you know what time it was

4 when Mr. Ray ended his sweat lodge ceremony?

5 A. **The exact time, no.**

6 Q. Do you have a rough guess?

7 A. **Around 5:30.**

8 Q. And what are you basing that guess on?

9 A. **Where the sun was sitting in the sky.**

10 Q. Okay. And where was the sun?

11 A. **Just about ready to go over the mountain.**

12 Q. And Angel Valley is in a valley?

13 A. **Yes, ma'am.**

14 Q. When we took the break, you were

15 mentioning the arrival of the ambulances or the

16 police. Do you know how 9-1-1 got called?

17 A. **Yes, ma'am. Debbie Mercer and Amayra**

18 **Hamilton both called.**

19 Q. And how do you know that?

20 A. **I heard Debbie say to Amayra to call**

21 **9-1-1. And I know after the fact that Debbie also**

22 **called.**

23 Q. Did you see both ladies leave the sweat

24 lodge area?

25 A. **Yeah. I saw Amayra go one way.**

1 Q. And what were you doing when people left

2 to go call 9-1-1?

3 A. **Taking care of people that were on the**

4 **ground.**

5 Q. Do you know in terms of first responders

6 what arrived first? An ambulance? A fire truck?

7 A. **I have no idea.**

8 Q. Okay. And I'm going to put up on the

9 overhead Exhibit 554. Do you recognize generally

10 what that road is?

11 A. **Yes, ma'am. That's the road going into**

12 **Angel Valley.**

13 Q. And how many ways are there to get in and

14 out of Angel Valley?

15 A. **One.**

16 Q. Just the one seen in the photograph?

17 A. **89B. Yes, ma'am.**

18 Q. It's called what?

19 A. **89B.**

20 Q. And you know it because you drive it?

21 A. **Every day.**

22 Q. Twice a day maybe?

23 A. **Sometimes.**

24 Q. Just before we took the break, you -- let

25 me ask you this: Do you have a sense of how much

1 time had passed from the time the sweat lodge

2 ceremony ended and the arrival of first responders?

3 A. **Maybe 30 minutes. The time is really**

4 **jumbled at that point.**

5 Q. What were you doing during the

6 approximately 30 minutes?

7 A. **Helping -- I was with this one lady on**

8 **the ground.**

9 Q. Okay. Was your role to be there to take

10 care of people in distress?

11 A. **No, ma'am.**

12 Q. Why did you do what you did?

13 A. **Because that's what you do as a human**

14 **being. When somebody is suffering, you help, if**

15 **you can.**

16 Q. You told the jury right before we took a

17 break that Mr. Ray -- as the first responders were

18 arriving, that he gave direction to people. What

19 did you hear him say?

20 A. **I heard him tell people that -- his**

21 **participants that if anybody could walk -- that**

22 **anybody that could to go back to their rooms and**

23 **clear the area.**

24 Q. Do you have a recollection as to how many

25 people, in fact, left the area?

1 **A. I didn't see anybody get up and leave.**
 2 **Q.** And during that 30 minutes waiting for
 3 the first responders to arrive, did you observe
 4 Mr. Ray during that time?
 5 **A. Can you repeat that.**
 6 **Q.** During the 30 minutes -- the
 7 approximately 30 minutes that it took from the end
 8 of the sweat lodge ceremony until the emergency
 9 medical personnel arrived, did you observe what
 10 Mr. Ray was doing in that time?
 11 **A. Other than talking to the one -- bending**
 12 **over and talking to the one gentleman at the end of**
 13 **the tarp, no, ma'am.**
 14 **Q.** Did you ever hear a woman calling out for
 15 Mr. Ray?
 16 **A. No.**
 17 **Q.** In terms of people getting dragged out,
 18 you said you saw two people. And I'm going to put
 19 back up on the overhead Exhibit 277. Do you know,
 20 Ms. Foster, how many people were dragged out the
 21 back or the side of the sweat lodge?
 22 **A. The two that I saw.**
 23 **Q.** And did you ever become aware of a third
 24 person?
 25 **A. No, ma'am. After the fact, yes, ma'am.**

1 **Q.** Later you learned that a third person was
 2 dragged out?
 3 **A. Yes.**
 4 **Q.** You told -- well, let me ask you this:
 5 What did you do after the first responders arrived?
 6 **A. As I stated before, I got out of the way**
 7 **because they know what they're doing.**
 8 **Q.** Meaning where did you go?
 9 **A. I just got outside of the scene.**
 10 **Q.** Did you stay around the scene?
 11 **A. Yes, ma'am.**
 12 **Q.** I'm going to put up on the overhead
 13 Exhibit 230 and ask if you recognize this scene?
 14 **A. Yes, ma'am.**
 15 **Q.** Are you in that photograph?
 16 **A. (No audible response.)**
 17 **Q.** Do you want me to bring that photograph
 18 up to you?
 19 **A. Please.**
 20 **Yes, ma'am, I'm right here.**
 21 **Q.** I'm going to put it back on the overhead.
 22 And you can show the jury.
 23 **A. This is me right here. I kind of drew**
 24 **over me.**
 25 **Q.** It would be right here?

1 **A. Yes, ma'am.**
 2 **Q.** Okay. Do you know what you were looking
 3 at there?
 4 **A. Not a clue. I was just standing back.**
 5 **Q.** Okay. What were you feeling then?
 6 **A. Devastated, just in total disbelief of**
 7 **what I'd just witnessed.**
 8 **Q.** How long did you stay down at the scene
 9 of the sweat lodge?
 10 **A. Until 11:30 that night.**
 11 **Q.** And where did you go after that?
 12 **A. I went over to Ted and Debbie Mercer's**
 13 **house with their daughter Sarah because Debbie was**
 14 **not feeling well. So she had to go to the doctor.**
 15 **So I stayed with their daughter.**
 16 **Q.** Did you at some point do an interview
 17 with the detectives?
 18 **A. Yes, ma'am.**
 19 **Q.** Do you recall how many interviews you
 20 did?
 21 **A. Two, I believe.**
 22 **Q.** And when was the first one?
 23 **A. A couple of weeks after the event.**
 24 **Q.** Did you talk to any of the detectives
 25 that night of October 8?

1 **A. And that night as well. About 11:30 I**
 2 **talked to one of the police officers and gave them**
 3 **a statement.**
 4 **Q.** And where were you when you gave the
 5 police officer a statement?
 6 **A. Sitting in this cart right here,**
 7 **somewhere in this area. It was dark.**
 8 **Q.** Okay. And then a couple of weeks later,
 9 you gave another statement?
 10 **A. Yes, ma'am.**
 11 **Q.** Do you recall where you were when you
 12 gave that statement?
 13 **A. I was up at Michael and Amayra's house**
 14 **talking to the detective in their dining room.**
 15 **Q.** Was that in person?
 16 **A. Yes, ma'am.**
 17 **Q.** Did you come back to Angel Valley on
 18 Friday, October 9, 2009?
 19 **A. Yes, ma'am.**
 20 **Q.** To work?
 21 **A. Yes.**
 22 **Q.** Were you getting much work done that day?
 23 **A. No. To be honest, I never left that**
 24 **night. I stayed all night long.**
 25 **Q.** You talked about being with Sarah Mercer

1 that night. Where did the Mercers live then?
 2 **A. At that time they were living on the**
 3 **property in a two-story house.**
 4 **Q.** On Angel Valley property?
 5 **A. Yes.**
 6 **Q.** So you spent some time that night with
 7 their daughter?
 8 **A. Yes.**
 9 **Q.** How old was their daughter?
 10 **A. I believe it was just before she turned**
 11 **18.**
 12 **Q.** And her name is Sarah Mercer?
 13 **A. Yes, ma'am.**
 14 **Q.** Was Sarah at the scene of the --
 15 **A. Yes.**
 16 **Q.** -- sweat lodge October 8th of 2009?
 17 **A. Yes, ma'am.**
 18 **Q.** And how was Sarah that night?
 19 **A. Very, very upset.**
 20 **Q.** And you might have to pull the
 21 microphone.
 22 **A. Very upset.**
 23 **Q.** You can pull it all the way, I believe.
 24 There you go.
 25 How long did you stay with Sarah?

1 **A. I stayed with her all night.**
 2 **Q.** And what about -- without telling us what
 3 Sarah said, what about what you observed that night
 4 with Sarah makes you testify that she was very
 5 upset?
 6 **A. Well, she was just in tears and**
 7 **hysterical. And to be honest, I was too at that**
 8 **point. We really didn't talk the rest of the**
 9 **night. I just held her in my arms and rocked her.**
 10 **Q.** And you were very upset too?
 11 **A. Yeah.**
 12 **Q.** And for you to testify about it today,
 13 it's difficult?
 14 **A. Yeah.**
 15 **Q.** Were you part of taking down and burning
 16 that sweat lodge in the days following?
 17 **A. Yes, ma'am.**
 18 **Q.** Do you recall when that happened?
 19 **A. I believe it was that Sunday.**
 20 **Q.** Do you know whose idea it was to do a
 21 ceremony?
 22 **A. It was all of ours.**
 23 **Q.** And who is all of us?
 24 **A. Me and Michael and Amayra Hamilton, Sue,**
 25 **Ted and Debbie Mercer, Kirsten. All of us.**

1 **Q.** At that point you all had learned that
 2 two people had died, and there was one more in
 3 critical condition?
 4 **A. Yes, ma'am.**
 5 **Q.** Why did you want to do a ceremony at the
 6 scene?
 7 **A. It is my belief that when a lodge has**
 8 **been desecrated that it needs to come down in a**
 9 **sacred way. It should never be used again.**
 10 **Q.** I'm going to put up on the overhead
 11 Exhibit 488. And I want to ask you if you
 12 recognize that scene.
 13 **A. Yes, ma'am.**
 14 **Q.** When you and the Hamiltons and the other
 15 people you've mentioned did a ceremony, was this
 16 crime-scene tape gone?
 17 **A. Yes, ma'am.**
 18 MR. KELLY: Judge, I would agree to 232, 233,
 19 and 236.
 20 THE COURT: 232, -33, and -36 are admitted.
 21 (Exhibits 232, 233, and 236 admitted.)
 22 **Q.** BY MS. POLK: Ms. Foster, are you part
 23 Native American?
 24 **A. Yes, ma'am.**
 25 **Q.** Explain to the jury your heritage.

1 **A. I'm a quarter Cherokee and a quarter**
 2 **Sioux.**
 3 **Q.** And is that part of your heritage
 4 important to you?
 5 **A. Yes, ma'am.**
 6 **Q.** I'm going to put up on the Exhibit 233
 7 and just ask you -- first of all, do you recognize
 8 that?
 9 **A. Yes, ma'am.**
 10 **Q.** Tell the jury what that is a photograph
 11 of.
 12 **A. That's a photograph of us all taking the**
 13 **lodge down piece by piece in the sacred way to be**
 14 **burnt.**
 15 **Q.** Why does the lodge need to be taken down
 16 piece by piece? What does that mean?
 17 **A. Because it was built piece by piece, and**
 18 **you don't use tools to build it with. You use your**
 19 **hands. And it was very monumental for us to do it**
 20 **with our hands and give it back to Mother Earth.**
 21 **It was part of our healing.**
 22 **Q.** Did you take part in dismantling the
 23 blankets, the sleeping bags, the tarps, the things
 24 that were on --
 25 **A. No, ma'am. Those were already off when I**

1 got down there.

2 Q. Okay. About how many people participated
3 in the dismantling?

4 A. About 25 or so. To be honest, I don't
5 have an exact number.

6 Q. How long did it take to dismantle it?

7 A. I can't answer that. I don't know.

8 Q. Okay. And I'm going to put up on the
9 overhead Exhibit 232. Is this also a photograph of
10 the dismantling and the ceremony?

11 A. Yes, ma'am.

12 Q. Can you tell the jury who the people are
13 in this photograph?

14 A. This gentleman here is Mark Rock. This
15 is Michael Hamilton. This looks like Ester. And I
16 really can't make out the other faces. I'm not
17 sure who they are.

18 Q. In this photograph we see the limbs, the
19 twigs, the -- I'm not sure what the appropriate
20 term is. Is that the structure before it was
21 actually taken down?

22 A. Yes, ma'am.

23 Q. And do you know if that's also called the
24 "kiva"?

25 A. No, ma'am.

1 Q. The rocks that we see -- do you know
2 where those rocks came from?

3 A. They came out of the middle of the pit in
4 the sweat lodge.

5 Q. And I'm going to put up on the overhead
6 Exhibit 236. What was the transition from seeing
7 the skeleton or the structure, the rocks where we
8 see them, to the photograph that we see in 236.
9 Can you describe for the jury what you all did and
10 how we get here.

11 A. We said many, many prayers as we were
12 taking it down. The rocks were put out of the
13 pit -- around the pit, and we put the entire lodge
14 in the pit and burnt it.

15 Excuse me.

16 Q. It's okay. Take your time.

17 A. Anyway, we took the rocks out of the pit.
18 They were close to the shape of a heart, so we just
19 kind of moved them a little bit and laid out a
20 transformation garden.

21 Q. And, Ms. Foster, other than the interview
22 a couple of weeks after the event itself in October
23 of 2009, have you had to speak about what you
24 witnessed that day other than being here in court?

25 A. No, ma'am.

1 Q. Can you tell the jury if you recognize
2 any of the people in this photograph?

3 A. Yes, ma'am. This is Max, and this is
4 Sue Ellen. This is Jordan. And I believe this
5 is -- that's Ted there with the bald head. And
6 that's it. That's all I can recognize.

7 Q. Okay. How long would you say you were
8 all together around the wood that had been inside
9 the sweat lodge that is now being burned? How long
10 were you all gathered around it?

11 A. Several hours until it was all gone.

12 Q. It took a while to burn it?

13 A. Yes, ma'am.

14 Q. Did you burn it all at once or in pieces?

15 A. Well, in the interest of being in the
16 forest and not having a forest fire, we burned it
17 as parts. We didn't burn it all at once.

18 Q. And were you around that fire the whole
19 time that the wood that had formed --

20 A. Yes, ma'am.

21 Q. -- the sweat lodge was burning?

22 A. Yes, ma'am.

23 Q. Did you ever get sick from being around
24 that fire --

25 A. No, ma'am. I didn't.

1 Q. -- or from inhaling the smoke or smelling
2 the smoke? You did not get sick?

3 A. No, ma'am.

4 Q. You had mentioned earlier that you had
5 done sweat lodges yourself. And will you remind me
6 and the jury what your history is with doing sweat
7 lodges.

8 MR. KELLY: Your Honor, objection. Relevance.

9 THE COURT: Overruled.

10 You may answer that.

11 THE WITNESS: My history is because it's part
12 of my heritage. I've studied the Native American
13 way and have taken part in Vision Quest and sweat
14 lodges.

15 Q. BY MS. POLK: Okay. And how many sweat
16 lodges would you say you've done?

17 A. About 10 all together.

18 Q. Have you ever done any sweat lodges on
19 the Angel Valley property?

20 A. Yes, ma'am.

21 Q. Tell the jury when that was.

22 A. One earlier in '09. Earlier in '09, I
23 believe.

24 Q. Had you ever been present while other
25 sweat lodge ceremonies were being conducted at

1 Angel Valley?

2 **A. Yes, ma'am.**

3 MR. KELLY: Your Honor, objection.

4 THE COURT: Overruled.

5 **Q.** BY MS. POLK: And on what occasions?

6 **A. In '08 there was a lodge. There was also**
 7 **a lodge in '08 for James Ray that I was not part**
 8 **of. I did not witness it.**

9 **Q.** Okay. Which lodge did you witness in '08
 10 on Angel Valley property?

11 MR. KELLY: Your Honor, may we approach?

12 THE COURT: No.

13 You may answer that.

14 THE WITNESS: Sorry?

15 **Q.** BY MS. POLK: You said in 2008 there was
 16 a sweat lodge ceremony conducted on Angel Valley
 17 property, not the one that Mr. Ray conducted, but a
 18 different one. Were you present for that one?

19 MR. KELLY: Your Honor, objection. Relevance.

20 THE COURT: That can be responded to yes or
 21 no.

22 And overruled.

23 You may answer that.

24 THE WITNESS: I can't answer that with a yes
 25 or no.

1 THE COURT: Okay. That's the other way to
 2 answer the question if you can't answer it yes or
 3 no.

4 THE WITNESS: Okay.

5 **Q.** BY MS. POLK: In talking about 2008, do
 6 you know how many sweat lodge ceremonies were
 7 conducted on the Angel Valley property?

8 **A. Starting in 2008?**

9 **Q.** Yes.

10 MR. KELLY: Your Honor, objection.

11 THE WITNESS: Three that I'm aware of.

12 THE COURT: Overruled. The answer stands.

13 **Q.** BY MS. POLK: And were you present for
 14 any of those three? And that's a vague question.
 15 Did you participate yourself in a sweat lodge
 16 ceremony on the Angel Valley property in 2008?

17 **A. One.**

18 **Q.** In 2008 or 2009?

19 **A. No. That was '09. I'm sorry.**

20 **Q.** In 2008 did you participate yourself?

21 **A. No, ma'am.**

22 **Q.** You have told the jury that you're aware
 23 of three other ceremonies being conducted on the
 24 property in 2008; is that correct?

25 MR. KELLY: Your Honor, again, I'm going to

1 object. Lack of foundation. Ask that this line of
 2 questioning and the answers be stricken.

3 THE COURT: Counsel, approach, please.
 4 (Sidebar conference.)

5 THE COURT: Mr. Kelly.

6 MR. KELLY: Judge, I believe based on the
 7 disclosure provided by the State of Arizona that
 8 this witness began her employment at Angel Valley
 9 in approximately April of 2008. She testified she
 10 did not participate in a sweat lodge during that
 11 time period. And I believe her belief as to the
 12 number of sweat lodges is based on hearsay
 13 information.

14 Finally and most importantly, Judge,
 15 again, I would reassert our objection on the basis
 16 of relevance. As you know, Judge, this is a
 17 manslaughter case based on the specific facts on
 18 October 8 of 2009, when that particular sweat lodge
 19 was being conducted by James Ray International,
 20 JRI.

21 The relevance this lady has because she
 22 is a Native American, as to her prior
 23 experiences -- if she's somehow being offered as an
 24 expert witness to provide an opinion as to whether
 25 the sweat lodge in this case was properly

1 conducted, Judge, she's not been disclosed as such.
 2 And that's highly improper to provide an opinion in
 3 that regard. And if it's not being offered for an
 4 opinion, it has no relevance.

5 THE COURT: Ms. Polk.

6 MS. POLK: Your Honor, this whole line of
 7 questioning is relevant to the issue of causation.
 8 This witness will testify that it is the same sweat
 9 lodge structure used in 2008 and 2009, that there
 10 are -- that when Mr. Ray conducts his ceremony
 11 in 2008, she was not present. But she is aware of
 12 and in and out when other sweat lodges are being
 13 conducted in 2008.

14 For those that she was present, not in,
 15 but in the area, to the extent that I can lay the
 16 foundation, she will testify that she didn't
 17 observe any people sick.

18 And that for 2009 she will testify that
 19 she participated as a participant in a sweat lodge
 20 ceremony at Angel Valley in that same structure
 21 that Mr. Ray used for his ceremony later in the
 22 year. And it directly goes to causation.

23 The defense has suggested that the rocks,
 24 the wood, the blankets, the tarps -- that there is
 25 some other source of causation that caused these

1 people to be ill in his ceremony in October
2 of 2009.

3 The fact that this witness was personally
4 in that same structure a little bit earlier in the
5 year and did not get sick is very relevant to the
6 issue of causation. And then her experience in
7 that ceremony in 2009 in that same structure, how
8 long it was, how many rocks, how hot, is all
9 relevant.

10 MR. KELLY: Judge, I would remind the Court
11 that this witness's testimony on direct examination
12 was that she was not present during the
13 construction of the 2009 sweat lodge. She has no
14 basis to provide an opinion that identical
15 materials were used between the Mr. Singing Bear
16 sweat lodge and the James Ray International sweat
17 lodge in 2009. We have no foundation for anything
18 that happened in 2008.

19 I did file a specific motion requesting
20 the Court prohibiting lay witnesses providing
21 opinion testimony. And that motion was granted,
22 Judge.

23 Now, there is obviously, finally, Judge,
24 a significant 403 aspect to this particular line of
25 questioning since what the State of Arizona is

1 doing is saying that, given the defense, that an
2 inadequate investigation was conducted as to
3 causation. They're trying to now get around the
4 reality of that problem by bringing in people like
5 this and saying, well, did you see anybody get sick
6 in a prior sweat lodge?

7 It's highly prejudicial, Judge, has
8 marginal relevance, and she has no foundation
9 because she can't even testify as to whether they
10 there were identical materials used between -- and
11 only in 2009 -- between the sweat lodge ceremony
12 that she participated in and the one on October 8.

13 Finally, Judge, we have a significant
14 disclosure issue that we were not aware of until
15 her testimony about 15 minutes ago. I don't know
16 given that whether it's better to have an early
17 lunch and --

18 THE COURT: I want to address what's before
19 the Court right now. First of all -- and,
20 Mr. Kelly, you need to be listening.

21 MR. KELLY: Sorry.

22 THE COURT: These general questions about
23 being around sweat lodges, that doesn't implicate
24 her as an expert somehow in any way. It's just a
25 general type of knowledge that she's been around

1 some sweat lodges. That's not an issue, in my
2 view.

3 And I've been careful to listen to the
4 questions.

5 Because, Ms. Polk, I do agree if there is
6 going to be any kind of saying this person is an
7 expert on how sweat lodges can be operated with
8 participants, I see that as a whole different issue
9 because it's how they react in the sweat lodge,
10 what their experience has been. Those things are
11 relevant to an actual participant.

12 But somebody else -- I mean, how those
13 sweat lodges were conducted and comparing them, I
14 didn't see you doing that. I didn't hear you go
15 there. But that's one concern Mr. Kelly apparently
16 has about her background.

17 There is an issue about taking down the
18 sweat lodge. That's just kind of come up. Why it
19 was taken down, when it was taken down. And that
20 information she's given is relevant to that.

21 So I don't have any problem with any of
22 the questions so far. I do -- there does need to
23 be foundation, though, for what she actually knows
24 about the sweat lodge.

25 But if it's going to be that she was in

1 that structure and there is proof somehow that she
2 was, then I think that's relevant testimony.

3 Ms. Polk.

4 MR. KELLY: If I may, in regards to relevance.
5 I don't see how -- assuming that the state were to
6 later present the testimony of Ted Mercer, who
7 constructed this sweat lodge on October 8, and
8 assuming he constructed an earlier sweat lodge and
9 participated, he could say they were roughly
10 identical.

11 The problem here and from a 403 analysis,
12 I believe what the State of Arizona is trying to do
13 is say on a prior occasion we only went three or
14 four rounds. We only put five or six rocks. We
15 had had a Native American who was conducting the
16 sweat lodge, and no one got sick.

17 That has marginal, if any; little, if
18 any, probative value. And yet it's highly
19 prejudicial because it implies this underlying them
20 of negligence --

21 THE COURT: That's what I'm saying. That
22 would be setting somebody up as an expert, like
23 there is some standard be -- standard as to how you
24 run sweat lodges. There is not that I'm aware of.

25 Ms. Polk, is that what you intend to do?

1 MS. POLK: No.

2 THE COURT: I didn't think so. I didn't hear
3 that.

4 MR. KELLY: I guess I don't understand.

5 MS. POLK: Again, to the issue of causation,
6 which has -- this is not new. We've been talking
7 about causation many, many weeks and months now.

8 This is a witness who was in a ceremony
9 conducted in that same structure used in Mr. Ray's.
10 How that ceremony was conducted is relevant because
11 it goes to the weight of her testimony. It's a
12 different ceremony. It's shorter, and there is
13 significant differences in it. That's what's
14 relevant to the issue of causation. This is the
15 same structure.

16 And later in 2009 people get sick and
17 they die in. I'm having her talk about the
18 ceremony, how it was conducted, because that's
19 relevant to this issue of causation. Not to have
20 her testify as an expert. But if it's a shorter
21 ceremony, if there is fewer rocks, then that goes
22 to differences between the way the two ceremonies
23 are conducted and directly to the issue of
24 causation.

25 And one thing while we're here. This

1 witness is not part of the construction. And I
2 would make an offer of proof that there will be a
3 subsequent witness who will testify that it is the
4 same structure and it's the same material and the
5 same tarps. She knows that it's the same
6 structure. But the details she's not part of.

7 So in terms of laying the foundation, I
8 would ask for the Court's permission to have her
9 testify about her experience in that structure.
10 And then conditioned upon laying the foundation
11 through a subsequent witness that it is, in fact,
12 the same structure.

13 I believe she will say she believes it's
14 the same structure. She's not going to be able to
15 say she was part of the construction of it. Of
16 course, the Hamiltons as well will say it's the
17 same structure.

18 MR. KELLY: Judge, all my concerns, of course,
19 are on the record. And I still don't get this link
20 to causation the way it's been explained by the
21 State of Arizona. What it's doing is improperly
22 implying to the jury negligence on the part of
23 Mr. Ray.

24 THE COURT: Well --

25 MR. KELLY: There is a significant 403

1 concern. I don't understand the causation
2 argument. What does this have to do with causation
3 when she was in a different sweat lodge on a
4 different day conducted by different people in a
5 different manner.

6 MS. POLK: Same sweat lodge.

7 THE COURT: Why would that necessarily show
8 any kind of fault on Mr. Ray either? There is
9 different sweat lodges. People conduct them
10 differently.

11 MR. KELLY: That's my 403 concern. I agree.
12 Why would that show anything to Mr. Ray?

13 THE COURT: As to causation, I thought I've
14 heard some suggestion there could be a problem with
15 tarps and materials that what might be on the
16 ground. There can be changes in all that. That's
17 a whole different kind of issue.

18 MR. KELLY: Then wouldn't it be necessary for
19 this witness to be able to testify that it was the
20 same tarp?

21 THE COURT: Well, it could not -- could only
22 be conditional relevance. If there is going to be
23 an issue, I would not want it to come in. Ms. Polk
24 is making the avowal that there will be somebody
25 saying they're the identical materials. The rules

1 specifically allow for that kind of conditional
2 admission. And this witness is on the stand now.
3 I think that's appropriate.

4 But there can't be comparison to other
5 sweat lodges at other times. That's just --
6 because that would tend to suggest that, oh. There
7 is some proper way to do these. This is not a
8 witness who could testify to that.

9 In terms of being in that structure and
10 her experience, it can be contrasted in whatever
11 way people want to contrast it.

12 The structure is part of the case. The
13 structure is part of the case, Mr. Kelly.

14 MR. KELLY: Judge, the final thing I would add
15 for purposes of the record is that she was not a
16 participant in 2009, so she was not inside the
17 sweat lodge. And the same people that were in
18 the -- we'd have to pair up identical human beings.

19 As an example, Mark Rock would have to
20 say, I was in the sweat lodge in April of 2009, and
21 I was in the sweat lodge in October of 2009, in
22 order for this causation link to exist or overcome
23 any -- or overcome the 403 prejudice analysis.

24 THE COURT: Okay. Well, I've -- I'm going to
25 let the testimony -- there is foundation. And

1 there cannot be anything suggesting how it should
2 be run or should have been run or anything like
3 that. Just in terms of the structure, it will be
4 admitted upon the avowal it will be connected up,
5 this was the structure that was used at a later
6 time.

7 MR. KELLY: Judge, the way I bring up my
8 second issue in case it can be cured over the lunch
9 hour, a few moments ago she said she was
10 interviewed twice, October 8 and October 26. All
11 the information provided to us in this case
12 indicates that the only conversation with the
13 detective was on October 26. So I don't know where
14 that came from.

15 THE COURT: We'll take that up at the recess.

16 Thank you.

17 (End of sidebar conference.)

18 THE COURT: Ms. Polk.

19 MS. POLK: Thank you.

20 Q. Ms. Foster, thank you for your patience.

21 In 2008 do you -- are you personally
22 aware of sweat lodge ceremonies being conducted at
23 the Angel Valley property?

24 A. Yes, ma'am.

25 Q. And how are you aware of that?

1 A. I was working there at the time.

2 Q. Did you have some role in assisting or
3 preparing for some of those ceremonies?

4 A. No, ma'am.

5 Q. How is it that you know that ceremonies
6 were conducted then?

7 A. Because I worked there and I know what's
8 going on.

9 Q. Did you ever visit the site of any of
10 those ceremonies in 2008?

11 A. No, ma'am.

12 Q. And do you know whether or not they were
13 conducted at that same location as the October
14 of 2009 ceremony?

15 MR. KELLY: Your Honor, objection.
16 Foundation.

17 THE COURT: Well, if she knows. And then
18 there can be questions about basis and knowledge if
19 necessary.

20 So if you can answer that yes or no,
21 Ms. Foster, you may do that.

22 THE WITNESS: Yes.

23 Q. BY MS. POLK: And I put up on the
24 overhead 140 -- Exhibit 140. You had identified
25 what I just circled as the site of the sweat lodge

1 in October of 2009?

2 A. Yes, ma'am.

3 Q. How do you know that there were
4 ceremonies conducted at that same spot in 2008?

5 A. Because that's the only lodge we have on
6 the property. And we had sweats, and that's where
7 they would be.

8 Q. And do you know if -- the sweat lodge
9 itself, is it left standing all the time?

10 A. The wood structure is. Yes.

11 Q. Were you there in 2008 when the wood
12 structure was first erected or constructed?

13 A. No, ma'am. It was there when I started
14 working there.

15 Q. Okay. And that was April of 2008?

16 A. Yes, ma'am.

17 Q. Let's talk about 2009. Do you personally
18 know how many ceremonies -- sweat lodge ceremonies
19 were conducted at the Angel Valley property?

20 A. Two.

21 Q. And you've testified about Mr. Ray's in
22 October of 2009. When was the other one?

23 A. The other one was earlier that year. I
24 don't remember the exact month. I was in that
25 lodge.

1 Q. Can you tell the jury approximately when
2 you were in the sweat lodge earlier in 2009.

3 A. I believe it was in August.

4 Q. But you could be mistaken about that?

5 A. Yes, I could.

6 Q. Could it have been as early as May
7 of 2009?

8 A. Could have. Yes.

9 MR. KELLY: Your Honor, objection. It's a
10 leading question. She answered she didn't know.

11 THE COURT: Overruled.

12 Ladies and gentlemen, we're going to go
13 ahead and take the noon recess at this time.
14 Please remember the admonition and all aspects of
15 that. And please be reassembled, let's say, at 20
16 after 1:00. We'll get started at 1:30. And I
17 remind you of the admonition.

18 And, Ms. Foster, you will be excused for
19 the recess as well. Remember the rule of exclusion
20 of witnesses and not trying to communicate in any
21 way with any other witness. It's a good idea not
22 to talk to anybody about the case until it's over.
23 Again, you can talk to the attorneys as long as
24 another witness is not present.

25 So I'm going to ask the parties to

1 remain. But the witness and the jury is excused at
2 this time.

3 Thank you.

4 (Proceedings continued outside presence
5 of jury.)

6 THE COURT: Ms. Polk, we had the rather
7 lengthy sidebar.

8 And I'll let the record show that the
9 jury has left. And Mr. Ray and the attorneys are
10 present.

11 After the lengthy sidebar I had that
12 concern with talking about being involved in other
13 sweat lodges. But what I had said is that if, in
14 fact, this was the same sweat lodge structure that
15 was used in October and completely the same, then
16 there would be relevance to this person being in
17 that sweat lodge.

18 I'm concerned about whether she really
19 knows that and concerned about is there really
20 another witness who would be saying that the
21 materials are just absolutely identical, that there
22 hadn't been any changing in the covering or
23 anything like that? And I didn't want to go any
24 further without addressing that.

25 MS. POLK: Your Honor, it's the state's belief

1 that there will be two more witnesses that -- or
2 perhaps three. The Hamiltons will testify that it
3 is the same skeleton and the same materials. And
4 then I believe Mr. Mercer will as well.

5 THE COURT: For the testimony to be admissible
6 on the basis I've indicated at sidebar, that's
7 critical. That's the case. So I wanted to stop
8 and make sure that that is the case before you got
9 into those questions about her experience in May or
10 whenever it was. I wanted to address that.

11 MS. POLK: And, Your Honor, I do believe that
12 it is the same. We are taking a lunch break -- and
13 I can see my detective nodding his head in
14 agreement with me. But I'll take the time at the
15 lunch hour to verify. But I believe that the
16 testimony will be that it's the same.

17 THE COURT: Thank you.

18 And, Mr. Kelly, you indicated you believe
19 there is a disclosure issue?

20 MR. KELLY: I do, Judge. But if I could
21 respond briefly to that. I'm concerned about the
22 state's response. I believe it's the same -- I
23 submit, Judge, that if there is any relevance --
24 and, again, I'd renew all my arguments at
25 sidebar -- in that somehow that relevance overcomes

1 any 403 three concerns.

2 I would point out, Judge, that the same
3 would mean identical. In other words, not only the
4 frame structure, which, I believe, is left open and
5 constructed over a period of time, but also the
6 materials which are placed on top.

7 THE COURT: What I call the "covering"?

8 MR. KELLY: The covering has to be placed in
9 the identical fashion. And when I see
10 Detective Diskin nodding yes, and given my review
11 of the disclosure, I believe there are witnesses
12 who will say, well, yeah. That's our structure and
13 these are our tarps.

14 But I don't know that anyone can under
15 oath say we constructed this thing identical -- in
16 an identical fashion on each occasion.

17 And, again, if the only purpose of this
18 is causation, Judge, I see it having limited,
19 limited probative value and a great deal of
20 prejudice. Because as we've submitted throughout
21 the course of this, there seems to be this idea
22 that -- kind of a negligence theory that my client
23 doesn't know how to conduct a sweat lodge like
24 Native Americans do, and people get sick. And that
25 misleads the jury away from this manslaughter

1 charge.

2 Finally, Judge, in regards to the
3 disclosure issue, this witness testified that on
4 October 8, I believe she said about 11:30 p.m. she
5 spoke with detectives. And we don't have any
6 information in that regard. We've just done a
7 search of all the police reports. It's not in
8 there. We do have a copy of the October 26th
9 interview with Yavapai County Sheriff's Office.

10 THE COURT: Ms. Polk, what is the interview
11 that you have?

12 MS. POLK: Your Honor, I only have the
13 information pertaining to the October 26th
14 interview as well. I don't know -- the state has
15 no information in the form of audio recording nor a
16 police report pertaining to anything 11:00 o'clock
17 that night.

18 It's not clear to me who that witness
19 spoke to. If she said officer -- and she might
20 have spoken to an officer, but we have no record of
21 that. I have no record of that in my file. And we
22 turned over everything that we have to the defense.

23 And, again, Your Honor, this is another
24 witness that the defense chose not to interview.

25 THE COURT: Well, if there is another

1 interview out there, the defense, of course, needs
2 to know about it. You would want to know about it
3 as well. And I would just ask that you check.

4 MS. POLK: I will double-check, Your Honor.
5 But I'm satisfied that I have everything and that
6 we've disclosed everything. And I can just tell
7 the Court that I have no information about an
8 interview occurring that night.

9 I was just asking her to find out about
10 the October 26. And she volunteered something that
11 night that was new to me.

12 MR. KELLY: Judge, I could be mistaken. And
13 the record obviously would correct me if I am
14 mistaken. But I recall the question being, you
15 were interviewed twice?

16 And she said, yes.

17 Then when?

18 That night and then a later date.

19 And Ms. Polk said, October 26?

20 She said, yes.

21 So from that I implied that the
22 government had knowledge when they asked the
23 question, you were interviewed twice? It wasn't
24 volunteered by the witness, so I think that needs
25 to be ferreted out.

1 THE COURT: Ms. Polk, is that what you asked?

2 MS. POLK: It is, Your Honor, because the
3 witness for this afternoon is Sarah Mercer. She
4 was interviewed twice. I was confusing the
5 witnesses. And for the witness this afternoon,
6 Sarah Mercer, she was -- they were two very short
7 interviews.

8 In my mind, as I started to go there, I
9 was confusing Sarah Mercer. And then when I looked
10 at my file and I saw all I had was the 26th
11 interview, that's when I further clarified with her
12 and found out there was a second interview.

13 But I'll just avow to the Court I did not
14 have knowledge of two interviews. And I was
15 thinking of Sarah Mercer this afternoon when I made
16 that statement, you were interviewed twice.

17 MR. KELLY: Judge, accepting that avowal,
18 then, I would ask for a stipulation that --
19 presented to the jury in that there is no record of
20 that conversation with the detective on October 8.

21 THE COURT: Do you have any problem with that,
22 Ms. Polk?

23 MS. POLK: Your Honor, I do. Again, this is a
24 witness the defense has chosen not to interview.
25 They had the opportunity to talk to her to find out

1 who she talked to and when. And there is no
2 precedent for a stipulation to the jury that there
3 is a department report or an audio or not on any of
4 this. That would be out of the ordinary, and there
5 is no reason for it.

6 MR. KELLY: Judge, if I may respond to this.
7 It goes to the witness's credibility. If she is
8 not remembering correctly or if she's not telling
9 the truth in speaking to a law enforcement officer,
10 that speaks to her credibility.

11 Alternatively, if she is telling the
12 truth, then we have a significant disclosure
13 violation.

14 What we're asking as a cure -- and I
15 suspect given the detail provided by
16 Detective Diskin, that every law enforcement
17 officer who spoke to any of the witnesses did
18 record that in a police report.

19 So I'm making the assumption that her
20 recollection is incorrect and thus explaining to
21 the jury through a stipulation that -- we'll find
22 out --

23 THE COURT: Wait a minute.

24 MS. POLK: The paralegal to the rescue.

25 Okay. Apparently, there was a department

1 report, a DR. And it's dated October 8, 2009. It
2 is by Sergeant Frank Barbaro. And in there he does
3 indicate he spoke with Fawn. And this is on
4 October 8 at Angel Valley.

5 And I can provide a copy to the defense.
6 That would be the Supplement 37. That's the YCSO
7 Supplement 37. And it was disclosed by the state.

8 MR. KELLY: Thank you, Judge.

9 THE COURT: We'll be in recess.

10 (Recess.)

11 THE COURT: The record will show the presence
12 of Mr. Kelly for the defense, Ms. Polk and
13 Mr. Hughes for the state. And Mr. Ray is not
14 present. And it is 1:20.

15 Mr. Kelly.

16 MR. KELLY: Judge --

17 MS. POLK: Oh. We are being told that the
18 door is locked to get into the courtroom.

19 THE COURT: Well, that would make a
20 difference.

21 (Pause in proceedings.)

22 THE COURT: The record will show the presence
23 of Mr. Ray and the attorneys.

24 Mr. Kelly.

25 MR. KELLY: Judge, in regards to my objection

1 relating to the presentation of testimony relating
2 to prior sweat lodges and prior sweat lodge
3 experiences being conducted in Angel Valley, I'd
4 like to make an offer of proof, Judge. And it
5 involves Exhibit 245, which has been marked in this
6 case and is not in evidence.

7 If I may approach, Judge?

8 THE COURT: Yes.

9 MR. KELLY: Exhibit 245, Judge, is the
10 photograph of the interior of a sweat lodge
11 constructed in 2008. And then also, Judge, in
12 Exhibits 518, 520, 521, and 522 are the photographs
13 of the interior of the sweat lodge used in
14 October -- on October 8, 2009.

15 Right before the break, Judge, I heard
16 the state, and we argued about the government's
17 ability to establish that the identical materials
18 placed in the identical fashion on these prior
19 occasions would somehow help them establish
20 causation.

21 And if you note, Judge, in the 2008 sweat
22 lodge, you can clearly see the writing on the
23 materials, I believe, from U-Haul Corporation,
24 which are not present in the photographs from
25 the 2009 sweat lodge.

1 And I handed you all those photographs,
2 Judge, because I believe that pretty much completes
3 the circle of the inside of the '09 sweat lodge.

4 So my offer of proof, Judge, is that I
5 believe prior to this witness's testimony, that
6 it's improper for her to go into prior sweat lodge
7 experiences if the proffer is that it's based on
8 causation.

9 And as we stated before lunch, it's our
10 position that the identical materials secured in
11 the identical fashion, identical temperatures, the
12 same people, would be necessary before it had any
13 relevance to the October 8, 2009, event.

14 And in the event that there is any
15 probative value on 403, it's prejudicial, would
16 greatly outweigh the admission of that evidence.

17 Thank you, Judge.

18 THE COURT: I don't agree about having things
19 identical. Sometimes -- many times there are
20 questions of weight, and those things are
21 determined by the jury, for one thing.

22 But I am concerned, Ms. Polk, because
23 this looks like a completely different covering
24 between the two photographs here -- well, one
25 photograph and then the other.

1 MS. POLK: May I see them? I'm not sure what
2 you were given.

3 THE COURT: I thought you'd already seen
4 these.

5 MS. POLK: No. I've seen it at some point. I
6 don't know what you've been given.

7 THE COURT: Right. Within the last few
8 minutes.

9 MS. POLK: Your Honor, what the witnesses will
10 testify to is that it is the same structure, the
11 same "kiva," as some of them will call it, the
12 wooden structure, and that it's the same materials.

13 Both the Hamiltons and the Mercers will
14 testify that it was constructed in 2008 and that
15 they constructed the skeleton, they left it up, and
16 that they put the materials on it for the various
17 ceremonies and that they unpacked the materials,
18 dry them out if necessary and put them away and
19 then bring them out and put them back on the same
20 structure.

21 It is my -- the state's belief that the
22 witnesses will testify it is the same materials. I
23 agree with the Court that the issues Mr. Kelly is
24 raising go to the weight, not the admissibility.
25 Issues about temperature, who the people are, the

1 exact order -- that would go to weight, not
2 admissibility.

3 THE COURT: Well, they could. A lot of this
4 would be subject to what an expert might say about
5 sources of toxins.

6 MR. KELLY: Judge, I was making an offer of
7 proof so that we don't have to keep arguing this.
8 I understand the government's position on this that
9 somehow it helps to establish causation. Again, I
10 see minimal, if any, relevance.

11 I agree, Judge, if we had experts who
12 could monitor the factors present in the October 8,
13 2009, sweat lodge and previous sweat lodges, there
14 may be some connection there in regards to
15 causation. My fear is what I've said. And that is
16 this is simply a way to establish some type of
17 testimony that my client didn't know what he was
18 doing, that Native Americans do it better, that
19 you're only supposed to go four rounds.

20 THE COURT: I didn't hear any testimony like
21 that from this witness.

22 MR. KELLY: No. I'm telling you what my
23 concern is, Judge. Because I think we're headed
24 down that path. And I've objected, and it was
25 sustained this morning. And that's my concern,

1 misleading the jury.

2 But I made an offer of proof, and I
3 appreciate the Court's time, Judge.

4 THE COURT: The other thing had to do with the
5 original 404(b) and what's behind that ruling. And
6 this witness testified to the effect that nothing
7 like this at all ever in her life, really
8 contrasting it with her own experience.

9 And that it in itself would make -- that
10 makes these prior experiences somewhat
11 questionable. Here's the -- in terms of relevance,
12 in terms of how relevant that prior experience
13 might be somehow.

14 With the different -- the materials are
15 put away. They're stored. And it's just another
16 one of those situations where this witness would
17 not be excused if there is foundation. If those
18 are the same materials, I can see there being
19 relevance. But at this point, I would need to see
20 the foundation, have the foundation before the
21 witness testifies, so then see where these other
22 witnesses go.

23 So I think there would be relevance if
24 the same materials are used and they're stored in
25 some fashion where they're -- you know -- not

1 exposed to various things. But if it's taken down
2 and reassembled -- I had the impression it was
3 actually left up through the warm months or
4 something like that in that identical condition.

5 Ms. Polk.

6 MS. POLK: Your Honor, the structure -- the
7 wooden structure is left up. The materials are
8 taken down before and after every ceremony that's
9 conducted in that structure.

10 This structure, the one that was used
11 in October of 2009, was constructed in 2008 and is
12 the same structure used. The witnesses, again,
13 will testify it's the same materials that were put
14 on that structure, taken down, packed away, and
15 then brought out again for the October of 2009 --

16 THE COURT: I'd want to hear that testimony
17 before admitting testimony that would go to the
18 effect of it's the identical materials and see
19 nothing happened before.

20 I'm just concerned that those witnesses
21 are going to be saying that or know where they're
22 stored or what else they might be stored with or
23 were they used for other purposes also -- all those
24 kind of foundational questions that this person
25 is -- apparently doesn't know.

1 MS. POLK: I do not believe this witness can
2 lay that kind of foundation, Your Honor. And so
3 her testimony -- I would either make that offer of
4 proof that I've made and allow her testimony
5 conditioned on that. Or, in the alternative, we
6 would have to let her go and recall her after the
7 Mercers and Hamiltons have testified.

8 THE COURT: That's what I said. There's
9 another witness that I will not excuse because at
10 this point, I would want to know that that
11 foundational testimony is there. But she just will
12 not be excused as a witness. I'm not going to
13 allow the testimony before the foundation in this
14 instance.

15 MS. POLK: I'm just hesitating because our
16 next witness is coming at 3:00. And -- are you
17 going to allow Mr. Kelly to cross-examine on what
18 she has testified to so far and then allow the
19 state to recall her to talk about --

20 THE COURT: Well, I didn't know that was the
21 last area you were going to cover.

22 MS. POLK: I just have a couple, but I don't
23 believe it will be that long. That would be the
24 issue, is that I would intend to have her testify
25 at some point about her experience in that same

1 structure earlier in 2009.

2 And if I can't -- obviously, I can't get
3 to that today if the Court is requiring the
4 foundational witnesses to testify first. So then
5 we have the issue of cross-examination by Mr. Kelly
6 and when that would occur.

7 THE COURT: Given my ruling, it's not going to
8 be admissible without foundation. I'm not going to
9 take it conditionally. She doesn't have that
10 foundational information, and I haven't seen an
11 offer of proof.

12 I accept your avowal, Ms. Polk. But I
13 noted that a number of witnesses have not been
14 interviewed on a number of points. And if she
15 possibly is called back on that point, then that's
16 a possibility. But it's not going to come in just
17 on the avowal.

18 When I look at the photographs and see
19 that there is a completely different configuration,
20 I don't know what -- one tarp looks a lot newer.

21 So that's the ruling. She's not going to
22 be able to testify about that because she doesn't
23 have the foundation to talk about those materials,
24 where they were, how they were stored, all of those
25 things.

1 So that's the ruling. And you just have
2 to decide how you're going to proceed.

3 (Recess.)

4 (Proceedings continued in the presence of
5 jury.)

6 THE COURT: The record will show the presence
7 of the defendant, Mr. Ray, the attorneys, the jury.

8 And Ms. Foster has returned to the
9 witness stand.

10 Ms. Polk.

11 MS. POLK: Thank you, Your Honor.

12 Q. Ms. Foster, when we took the break just
13 before lunch, we were talking about a ceremony that
14 you testified you had participated in at
15 Angel Valley earlier in the year 2009.

16 Do you recall that?

17 A. **Yes, ma'am.**

18 Q. And I'm going to put up, first of all,
19 Exhibit 145. Would you tell the jury -- do you
20 recall what that material on the outside of that
21 sweat lodge is?

22 A. **It's like a tarp, plastic.**

23 Q. And how big is it? Do you recall?

24 A. **Oh, I have no idea.**

25 Q. Is it in one piece or more than one

1 piece?

2 A. **One piece.**

3 Q. What color is it?

4 A. **Brown.**

5 Q. Have you ever been involved, Ms. Foster,
6 in putting together the sweat lodge itself?

7 A. **Not actual hands on. No, ma'am.**

8 Q. And have you been present when the sweat
9 lodge is being constructed?

10 A. **Yes, ma'am.**

11 Q. And tell us -- with respect to the 2009
12 sweat lodge structure, do you know when it was
13 first constructed, if you know?

14 A. **No. I don't know.**

15 Q. Do you know whether the sweat lodge that
16 you personally participated in earlier in 2009 was
17 the same sweat lodge that Mr. Ray used?

18 A. **Yes, ma'am.**

19 Q. And how do you know that?

20 A. **It's the only sweat lodge on the
21 property.**

22 Q. You testified earlier that the wooden
23 structure itself, the skeleton -- that that remains
24 in place.

25 A. **Yes, ma'am.**

1 Q. Do you recall when the one that was used
2 by Mr. Ray -- when it was first erected? Or, I
3 should say, do you know when it was first erected?

4 A. **No, I do not.**

5 Q. Do you know if the skeleton that was part
6 of the sweat lodge that you participated in earlier
7 in 2009 was the same structure used by Mr. Ray?

8 A. **Yes, ma'am. It was.**

9 Q. And how do you know that?

10 A. **It was there when I started working
11 there. It's the same lodge.**

12 Q. In April of 2008 --

13 A. **Yes, ma'am.**

14 Q. -- when you first began working at
15 Angel Valley?

16 A. **Yes, ma'am.**

17 Q. And do you know if that structure was
18 ever taken down from the time you first started
19 working there until Mr. Ray used it?

20 A. **Not to my knowledge. No.**

21 Q. Let's talk about the coverings that are
22 on that sweat lodge. Do you have any personal
23 knowledge -- well, first of all, do those coverings
24 remain in place like the structure does when the
25 sweat lodge is not in use?

1 A. **No, ma'am. They're taken off and folded
2 up and put in the pump house.**

3 Q. If I put back up on the overhead
4 Exhibit 140, can you show the jury where the pump
5 house that you just referred to is.

6 A. **Yes, ma'am. It's -- right here where it
7 says, well pump, there is a pump house there.**

8 Q. Who is it that takes the coverings down
9 and stores them in the pump house?

10 A. **At the time it was Ted and Rotillo, our
11 landscaper, and Max.**

12 Q. Have you ever seen that pump house where
13 the coverings are stored?

14 A. **Yes, ma'am.**

15 Q. And what would be the reason for you to
16 see the pump house?

17 A. **Because we also store ropes and straps
18 for our tents and stuff in there.**

19 Q. To your knowledge -- well, let me ask it
20 this way: Do you know if the coverings that were
21 on the structure for the sweat lodge used by
22 Mr. Ray in October of 2009 were the same coverings
23 that were used in the sweat lodge that you
24 participated in earlier in the year?

25 A. **As far as I know, yes, ma'am.**

1 MR. KELLY: Objection.

2 THE COURT: All right. Okay. That could be
3 answered with a yes or no. And that was the form
4 of the question.

5 You can answer in that fashion.

6 MR. KELLY: Your Honor, we would object on the
7 basis of lack of foundation. She testified she did
8 not construct the sweat lodge beforehand.

9 THE COURT: Then I'm going to overrule and
10 then ask for a yes or no answer if it can be
11 answered in that fashion.

12 THE WITNESS: My answer would be no.

13 Q. BY MS. POLK: My question was do you know
14 if it's the same coverings? And your answer is you
15 do not know?

16 A. I do not know.

17 Q. Do you have a belief as to whether or not
18 it's the same coverings?

19 MR. KELLY: Your Honor, objection.

20 THE COURT: Sustained.

21 Q. BY MS. POLK: Can I ask you why you don't
22 know if it's the same coverings?

23 MR. KELLY: Your Honor, objection.

24 THE COURT: This is really a question under
25 602. Sustained.

1 Q. BY MS. POLK: Do you know whether there
2 are coverings for that sweat lodge that are stored
3 in some place other than the pump house?

4 A. No. There are not.

5 Q. And do you know if there are other
6 coverings somewhere on the Angel Valley property
7 that would be used to cover that sweat lodge other
8 than the ones that are in the pump house?

9 A. No, ma'am. There are not.

10 Q. And then for the structure that you
11 participated in earlier in the year of 2009, do you
12 know where the coverings came from that were used
13 for your sweat lodge?

14 A. Out at the pump house.

15 Q. Do you know where the coverings used by
16 Angel Valley for Mr. Ray's sweat lodge in October
17 of 2009 -- where did they come from?

18 A. Out of the pump house.

19 MR. KELLY: Your Honor, again, I'm going to
20 object. They require hearsay responses, lack of
21 foundation.

22 THE COURT: Sustained as to foundation. The
23 original answer was no, she didn't know.

24 Proceed, Ms. Polk.

25 Q. BY MS. POLK: Ms. Foster, how do you know

1 that the coverings used in the -- for the sweat
2 lodge that you participated in -- how do you know
3 that they are stored in the pump house?

4 A. Because I'm in charge of storage and
5 keeping storage areas clean. And that's the only
6 place that I store sweat lodge stuff.

7 Q. And how do you know that the coverings
8 used for the sweat lodge used by Mr. Ray in October
9 of 2009 are stored in that same pump house?

10 A. Because that's the only place we put
11 sweat lodge coverings.

12 Q. Is there anyplace else on that property
13 that sweat lodge coverings are ever stored?

14 A. No, ma'am.

15 Q. I'm going to show you what's been marked
16 as Exhibit 238 and ask you if you recognize that.

17 A. Yes, ma'am.

18 Q. And what do you recognize that to be?

19 A. A sweat lodge.

20 MR. KELLY: Judge, the exhibit is not in
21 evidence.

22 THE COURT: It's just being generally
23 identified at this time. So overruled.

24 Q. BY MS. POLK: Do you know when that
25 photograph was taken?

1 A. No, I do not.

2 Q. And do you know whether that is the sweat
3 lodge that you --

4 MR. KELLY: Your Honor, objection. That's a
5 leading question.

6 THE COURT: If there can be identification,
7 then it can be done in a general fashion. The
8 exhibit has not been admitted and whether the
9 witness knows the contents of the photograph --

10 Ms. Polk, sustained. You may ask your
11 next question.

12 Q. BY MS. POLK: Do you know if that is a
13 photograph of the sweat lodge that you were in?

14 MR. KELLY: Your Honor --

15 THE WITNESS: It's the same lodge that I was
16 in. Yes.

17 THE COURT: Overruled.

18 Q. BY MS. POLK: And how do you know that?

19 A. Because it's the sweat lodge at
20 Angel Valley.

21 Q. Do you know what color the tarp is in
22 that photograph?

23 A. It's brown.

24 Q. Let me give it back to you and ask you,
25 what do you recognize about it that --

1 MR. KELLY: Your Honor --
 2 THE COURT: It hasn't been offered yet,
 3 Ms. Polk.
 4 MS. POLK: And I was going to lay more
 5 foundation.
 6 THE COURT: Go ahead and ask the question.
 7 Q. BY MS. POLK: You made the statement that
 8 you know that that's the sweat lodge at
 9 Angel Valley that you were in. What do you
 10 recognize about it that makes you believe that that
 11 is so?
 12 A. **This is our garden back here. This is**
 13 **Michael's Mountain. This is the path down to the**
 14 **river right here. There's the fire pit.**
 15 MR. KELLY: Your Honor, objection.
 16 MS. POLK: Your Honor, I move for the
 17 admission of Exhibit 238.
 18 THE COURT: Can I see the exhibit, please?
 19 I'm sustaining the objection.
 20 Q. BY MS. POLK: You have told us that you
 21 participated in a sweat lodge in 2009. Can you
 22 tell us what was the occasion that gave rise to you
 23 participating in a sweat lodge ceremony?
 24 MR. KELLY: Your Honor, objection. Relevance.
 25 THE COURT: Overruled.

1 THE WITNESS: Gary, the general manager at the
 2 time, said they were having just a sweat for some
 3 people that night and I was welcome to join if I
 4 would like.
 5 Q. BY MS. POLK: And did you join?
 6 A. **Absolutely.**
 7 Q. And do you know who the group was that
 8 you joined?
 9 A. **No, I don't. David Singing Bear was**
 10 **running the sweat.**
 11 Q. Do you know someone named David Singing
 12 Bear?
 13 A. **Not personally. No.**
 14 Q. How did you learn that that was the name
 15 of the person running the sweat?
 16 A. **Because I went into the lodge with him,**
 17 **and he introduced himself. And that's how I know**
 18 **who it was.**
 19 Q. How many people participated in that
 20 ceremony?
 21 MR. KELLY: Your Honor, objection. Relevance.
 22 THE COURT: Overruled.
 23 You may answer that.
 24 THE WITNESS: I want to say 40 or so people.
 25 There was a lot of people.

1 Q. BY MS. POLK: Did you know any of them?
 2 A. **No. Gary was the only one I knew.**
 3 Q. And explain to the jury who Gary was.
 4 A. **He was our general manager of the**
 5 **property at that time.**
 6 Q. Do you know Gary's last name?
 7 A. **No, I don't. It's not coming to me.**
 8 Q. Does Gary still work at Angel Valley? Do
 9 you know?
 10 A. **No, he does not.**
 11 Q. Do you know when he left?
 12 A. **I want to say June of the next year -- or**
 13 **June of that year -- I'm sorry -- of '09.**
 14 Q. Of '09. And does that help you recall,
 15 then, more specifically when this ceremony was that
 16 you participated in?
 17 A. **I'm actually thinking it was the end of**
 18 **'08 -- in October '08.**
 19 Q. And what makes you say that?
 20 A. **Just the time of year it was. To be**
 21 **honest, I didn't commit the date to memory because**
 22 **it -- I just don't know when it was.**
 23 Q. And do you know the name of the group
 24 that was participating in that ceremony?
 25 MR. KELLY: Your Honor, objection. Asked and

1 answered.
 2 THE WITNESS: No, I do not.
 3 THE COURT: Overruled. The answer stands.
 4 Q. BY MS. POLK: Was that group at
 5 Angel Valley for a particular reason?
 6 MR. KELLY: Your Honor, objection. Lack of
 7 foundation.
 8 THE COURT: If you have -- you may answer
 9 that, if you can, of your own knowledge.
 10 THE WITNESS: The answer would be no.
 11 Q. BY MS. POLK: Okay. What time did that
 12 ceremony begin?
 13 A. **It was either 4:00 o'clock or**
 14 **6:00 o'clock. It was late. It's been a long time**
 15 **ago.**
 16 Q. And how long did the ceremony last for?
 17 MR. KELLY: Your Honor, objection.
 18 THE COURT: Sustained.
 19 MS. POLK: Your Honor, may we approach?
 20 THE COURT: You may.
 21 (Sidebar conference.)
 22 MS. POLK: If it's your belief that I haven't
 23 laid sufficient foundation, I'll move on. I
 24 believe that I have. But if it's the Court's
 25 position you want to hear from the Hamiltons and

1 Mercers, then I'll move on and recall her on that
2 subject at another time.

3 THE COURT: Mr. Kelly.

4 MR. KELLY: I thought your position was clear,
5 Judge.

6 THE COURT: She's now indicating this could
7 have been a prior year. She doesn't know the time.
8 I thought her answer to the question was she didn't
9 know they were the same coverings.

10 MS. POLK: Well, her answer has been that
11 there is only one set of coverings. They were
12 stored on the property in the pump house. She's in
13 charge of storage. And that those are the only
14 materials that are used to cover that sweat lodge.

15 This structure that Mr. Ray used was
16 built earlier in October in 2008. And subsequent
17 testimony will establish that it is the same
18 structure, is the same coverings.

19 I believe her recollection it was October
20 of '08 that she was in it is correct. Her earlier
21 recollection that it was 2009, I believe, was
22 incorrect.

23 THE COURT: And you were suggesting at one
24 point may with a leading -- objected as to leading.
25 I didn't sustain that. But my clear recollection

1 of her is when she was asked the direct question of
2 knowing, she said she didn't. That's why I wanted
3 to follow up with why don't you know -- you know --
4 because she wasn't there when it was constructed.

5 MR. KELLY: Exactly. The problem, Judge, is
6 then we went into a series of questions about the
7 tarps that are -- the coverings that are stored at
8 Angel Valley. But she'll never know whether those
9 are the same materials because she was not there.

10 THE COURT: At least on her own it would seem
11 that way.

12 Anyway, Ms. Polk --

13 MS. POLK: I will if that's the Court's
14 ruling. I didn't want to take more time at the
15 podium. But the foundation I believe that I have
16 laid is that since her arrival on the property in
17 April of 2008, that structure was there. It has
18 never come down. There is only one set of
19 coverings, and they were used on that sweat lodge.
20 They're stored in that pump house. There is no
21 other places to store it.

22 So the logical -- that circumstantial
23 evidence that the same coverings used when she
24 participated were the ones used by Mr. Ray. There
25 is no other coverings there. There is no other

1 place to store them. That kiva -- or the structure
2 that has been erected was in place. It's never
3 been taken down.

4 THE COURT: There is foundation for that. But
5 with regard to --

6 Was it Mr. Sitting Bear that constructed
7 this or --

8 MR. KELLY: Singing Bear.

9 THE COURT: Singing Bear. Whether he adds
10 things or not, I don't know.

11 In terms of foundation as to what she
12 knows and what Angel Valley provides, and she has
13 laid the foundation as far as she knows as to
14 what's been used.

15 Mr. Kelly.

16 MR. KELLY: Judge, I was just going to, again,
17 reemphasize my offer of proof. Ms. Polk may want
18 to assume that there is only one set of coverings.
19 But there is no proof that there is only one set.
20 And clearly those photographs show two different
21 types of coverings in a one-year time period.

22 Again, this witness was not present when
23 the October '09 sweat lodge was constructed.

24 THE COURT: That's my ruling.

25 MS. POLK: And just to clarify, I do have the

1 right to recall her after we've laid the foundation
2 through the other witnesses.

3 THE COURT: There is a possibility. I'm not
4 excusing her because of that possibility.

5 MS. POLK: Thank you.

6 (End of sidebar conference.)

7 THE COURT: Ms. Polk, when you're ready.

8 MS. POLK: Thank you, Your Honor.

9 Q. I just want to ask you a few general
10 questions about the week of October 8, 2009. Did
11 you ever receive from anybody a schedule of events
12 for the week?

13 A. No.

14 Q. How did you know what you were supposed
15 to do for the events of the week, if anything?

16 A. The only scheduling that I had was a list
17 of times that they were coming in for breakfast,
18 lunch, and dinner.

19 Q. You testified earlier about setting up
20 some tents and things?

21 A. Uh-huh. That was before they even
22 arrived.

23 Q. And what was your role in that?

24 A. Moving beds and setting up big 10 by 20
25 tents and making room for everybody.

1 Q. Can you show the jury on this map on the
2 overhead where it is that you set up tents?
3 A. **Okay. The sweat lodge is right here.**
4 **The cabins are here right here along the river.**
5 **And then I set up a tepee here with extra beds, a**
6 **tepee here with beds, and a tepee here with beds**
7 **and another tent right here and two or three tents**
8 **right here. I don't remember whether it was two or**
9 **three.**
10 Q. Are you the person who cleaned the
11 cabins?
12 A. **Yes, ma'am.**
13 Q. Where you just drew this long, pink
14 line -- are these all the cabins on the property?
15 A. **Yes, ma'am.**
16 Q. And I'd like to ask you about the use of
17 insecticides or pesticides on the property. In the
18 time that you've been there, have you ever applied
19 any insecticides or used insecticides on the
20 property?
21 A. **Yes, ma'am.**
22 Q. And tell the jury what you have used.
23 A. **d-CON rat poisoning, rat biscuits, AMDRO**
24 **ant poison underneath the cabins; the rat poison in**
25 **storage sheds and stuff, underneath counters, and**

1 **up in attics.**
2 Q. Let's talk first about the rat poison.
3 Are you able to recall today, first of all, what
4 sort of rat poison it was?
5 A. **The name of it, no.**
6 Q. Who is it that purchased the rat poison?
7 A. **Michael.**
8 Q. Michael who?
9 A. **Hamilton.**
10 Q. Did you ever go out on your own and
11 purchase any insecticides or pesticides?
12 A. **Yes, I have.**
13 Q. For that property?
14 A. **Yes.**
15 Q. What did you go out and purchase?
16 A. **The d-CON.**
17 Q. Do you recall when it was that you
18 purchased d-CON?
19 A. **Sometime last year.**
20 Q. In what year?
21 A. **Of '10 -- 2010.**
22 Q. Okay. And how about in 2009? Did you
23 ever go purchase on your own any --
24 A. **No. Not that I remember.**
25 Q. You never purchased any insecticides or

1 pesticides or other --
2 A. **No.**
3 Q. But you did apply -- or you did use
4 insecticides or pesticides prior to 2010?
5 A. **Yes.**
6 Q. And in what year?
7 A. **2009. As I said, from 2009 on I've been**
8 **responsible for caretaking the property and**
9 **maintenance. So I've put like -- I applied -- I**
10 **put it up in the crawl spaces, in the attics. And**
11 **then the d-CON trays go underneath the tables or**
12 **benches, whatever you want to call them, in the**
13 **storage sheds.**
14 Q. And let's talk about -- first about what
15 you put in the attics. Can you show the jury on
16 this map what attics you're talking about?
17 A. **Yes, ma'am. In the dining room and**
18 **kitchen there is a crawl space in the buffet area**
19 **where you can get up to into the attic.**
20 Q. And what was up there?
21 A. **Huh?**
22 Q. What was up there that you were
23 addressing by putting a product?
24 A. **Critters. I never met one face to face,**
25 **so I can't answer that.**

1 Q. And what did you put up in the attic for
2 the --
3 A. **I put the little d-CON biscuits.**
4 Q. Are you sure they're called "d-CON"?
5 A. **Not positive. No.**
6 Q. And are you the one that purchased those
7 biscuits?
8 A. **Not the yellow biscuits that I throw in**
9 **the attic. No.**
10 Q. Okay. You would defer to Mr. Hamilton on
11 what the product specifically was?
12 A. **Yes, ma'am.**
13 Q. But they were yellow biscuits, as you
14 recall?
15 A. **Yes, ma'am. And little green squares.**
16 Q. Okay. You put both the yellow biscuits
17 and the green squares in the crawl space in the
18 dining room?
19 A. **Yes, ma'am. At different times I have.**
20 Q. Okay. And tell the jury where else on
21 the property you have put the biscuits for the
22 critters.
23 A. **Okay. The orange house, I believe, is**
24 **right here. Yeah. In the orange house in the**
25 **crawl space in the eagle room.**

1 Q. Will you circle the orange house. I
2 missed your mark.

3 Okay. And what happens at the orange
4 house?

5 A. **There's beds for eight people. It's a**
6 **two-bedroom home with a front porch and two**
7 **bathrooms. It's a rental living space.**

8 Q. Is that where participants to events
9 would say?

10 A. **Yes, ma'am.**

11 Q. Okay. What did you apply there?

12 A. **Same thing. The little biscuits up in**
13 **the crawl space.**

14 Q. Do you recall when that was?

15 A. **Not an exact date. No. But on and off**
16 **throughout last year and this year.**

17 Q. Okay. And, again, it would have been
18 Mr. Hamilton who purchased whatever you applied?

19 A. **Yes, ma'am.**

20 Q. Okay. Where else did you put the critter
21 biscuits?

22 A. **Also in the -- where is the office at?**
23 **In the office area up in the crawl space. And**
24 **there is also a trapdoor underneath on the bottom**
25 **floor that goes underneath the building. And I put**

1 **them in there.**

2 Q. Okay.

3 A. **Also in the lighthouse up in the crawl**
4 **space.**

5 Q. What is the lighthouse?

6 A. **The lighthouse is our massage and**
7 **meditation building.**

8 Q. Okay. And anyplace else you put those
9 critter biscuits?

10 A. **Right next to the lighthouse, this right**
11 **here is our storage area. And I put the d-CON**
12 **trays with the little green pellets underneath**
13 **these benches.**

14 Q. And you just used the word "d-CON."

15 A. **Yes, ma'am.**

16 Q. Are you sure about that?

17 A. **Definitely that's what I put in there.**

18 Q. Okay. And what is that particular
19 product meant to eradicate or get rid of?

20 A. **Rats --**

21 Q. Oh. The rats.

22 A. **-- and mice. Yes.**

23 Q. Are rats and mice a problem at that
24 property?

25 A. **Oh, yeah. We're out in the middle of**

1 **nowhere. So yeah.**

2 Q. How do you know -- have you ever actually
3 seen one?

4 A. **Oh, yeah.**

5 Q. And how would you know -- how would you
6 decide there is a problem here? I need to put one
7 of my trays --

8 A. **Well, I find evidence. You know, little**
9 **mouse droppings and chewed, frayed edges on my**
10 **extra pieces of carpet.**

11 Q. And anyplace else that you put the rat --
12 the biscuits or the product used to catch the rats
13 and the mice?

14 A. **No, ma'am.**

15 Q. Okay. What about in the pump house where
16 you told the jury the coverings for the sweat lodge
17 are stored?

18 A. **I've never personally put anything in**
19 **there.**

20 Q. Have you used other insecticides or
21 pesticides other than the biscuits for the
22 critters?

23 A. **Just the AMDRO ant stopper.**

24 Q. And what did you call that?

25 A. **AMDRO.**

1 Q. How do you spell that?

2 A. **A-M-D-R-O.**

3 Q. Are you the one who purchased that
4 product?

5 A. **No, ma'am. It was in the shop.**

6 Q. And where is the shop?

7 A. **Right here.**

8 Q. Where have you put -- tell the jury what
9 the AMDRO looks like.

10 A. **It's a little yellow pellet. And -- it's**
11 **a granule, a little yellow granule. And you**
12 **sprinkle it around the ant hill. And they take it**
13 **in and say thank you, and they move.**

14 Q. Where did you put the AMDRO for the ants?

15 A. **Underneath the back half of Cabin No. 5.**

16 Q. Can you show the jury on this map where
17 that would be.

18 A. **That would be -- let's see. There is**
19 **one, two, three, four. That would be this cabin**
20 **right here.**

21 Q. Do you recall when it was that you put
22 the ant killer there?

23 A. **That would be last year around June.**

24 Q. Of what year?

25 A. **'10 -- 2010.**

1 Q. Did you ever put any of that ant killer
2 prior to 2010 at the Angel Valley property?
3 A. **No, ma'am. I've only had the ant problem**
4 **that one time in that building.**
5 Q. Okay. And, Ms. Foster, did you ever
6 apply any insecticide or pesticide or other product
7 intended to get rid of critters or insects in the
8 area of the sweat lodge?
9 A. **No, ma'am.**
10 Q. I want to ask you a couple more questions
11 about the Spiritual Warrior seminar of 2009. We've
12 heard testimony about the staff and Dream Team
13 members gathering on Wednesday in the dining room
14 to eat and have a little something to drink while
15 the participants were out on the Vision Quest.
16 A. **Uh-huh.**
17 Q. Do you recall that incident?
18 A. **I recall them being there. But I was**
19 **busy doing things.**
20 Q. Nothing remarkable about it --
21 A. **No.**
22 Q. -- to you?
23 A. **No.**
24 Q. And I'm going to put back up on the
25 overhead Exhibit 144. And you told the jury -- you

1 talked about this log that you were seated on.
2 A. **Yes, ma'am.**
3 Q. Can you tell the jury, estimate for us,
4 how many feet that log is from the entrance to the
5 sweat lodge itself.
6 A. **Maybe as far as from me to you.**
7 Q. Okay. And I'm going to put up on the
8 overhead Exhibit 145 -- actually, I'll leave the
9 same exhibit up. This fire right here --
10 A. **Uh-huh.**
11 Q. Can you tell the jury which fire that
12 was.
13 A. **That's the fire to heat the stones.**
14 Q. Did you get close to that fire?
15 A. **Yes. As a matter of fact, I did. I made**
16 **a prayer tie and threw it in and sent some prayers**
17 **up.**
18 Q. When did you do that?
19 A. **Right after they went in.**
20 Q. The participants went in. You went over
21 to the fire. And what did you do there?
22 A. **I put a prayer tie in the fire.**
23 Q. A prayer -- I'm sorry?
24 A. **A prayer tie, which is a piece of cloth**
25 **with tobacco and prayers in it.**

1 Q. Okay. How close did you get to the fire
2 when you did that?
3 A. **Close enough for it to singe my hair.**
4 Q. Did you breathe or inhale the smoke when
5 you got that close?
6 A. **I'm sure I did. Not any more than I had**
7 **to.**
8 Q. Okay. Did you ever get sick from
9 breathing the smoke of that fire?
10 A. **No, ma'am.**
11 Q. You talked about the second fire where
12 the -- some writings were burned?
13 A. **Yes, ma'am.**
14 Q. Can we see the fire on this photograph
15 that's on the overhead?
16 A. **No, ma'am. You cannot.**
17 Q. Can you show the -- just kind of point on
18 the screen where that fire would be.
19 A. **It would be back over this way, back over**
20 **here.**
21 Q. And when you -- you told the jury that
22 there were some papers flying loose?
23 A. **Uh-huh.**
24 Q. In the process of collecting the papers,
25 did you, then, burn them?

1 A. **No. I just went around stomping on ash.**
2 Q. Okay.
3 A. **It wasn't actual physical paper burning.**
4 **It was ashes.**
5 Q. And did you ever get sick or have any
6 reaction to that fire?
7 A. **No, ma'am.**
8 Q. Did you ever have anything to drink or
9 eat from the water and the fruit that you had cut
10 up and put at the site?
11 A. **Yes, ma'am.**
12 Q. And when was that?
13 A. **During the lodge.**
14 Q. While the ceremony was going on?
15 A. **Yes.**
16 Q. Did you have any of this fruit to eat?
17 A. **Just a piece of watermelon.**
18 Q. And did that make you sick?
19 A. **No, ma'am.**
20 Q. And I'm going to put up on the overhead
21 Exhibit 281. Did you have anything to drink from
22 either of these two coolers?
23 A. **I drank one of the electrolyte waters.**
24 Q. And did that make you sick?
25 A. **No, ma'am.**

1 Q. Ms. Foster, did you ever use these
2 coolers for any other events or purpose?
3 A. Yes, ma'am.
4 Q. On how many other occasions?
5 A. Oh, probably five or six before then.
6 Q. Do you know whether anybody ever got sick
7 from -- on those five or six occasions got sick
8 from drinking from those coolers?
9 A. No, ma'am.
10 MR. KELLY: Objection -- strike that.
11 Q. BY MS. POLK: The tubs themselves that
12 are depicted in Exhibit 282, have you used them for
13 other occasions and other events?
14 A. Yes, ma'am. All the time.
15 Q. And, to your knowledge, has anybody ever
16 gotten sick after partaking from items from those
17 tubs?
18 A. No, ma'am.
19 Q. Do you drink the water from Angel Valley?
20 A. Yes, ma'am.
21 Q. And tell the jury where that water comes
22 from.
23 A. It comes from three different wells on
24 the property.
25 Q. Have you ever gotten sick after drinking

1 the water?
2 A. No, ma'am.
3 Q. Ms. Foster, I'm going to show you this
4 map of Angel Valley, Exhibit 140. And I note down
5 in the corner it has some language about some
6 wells.
7 A. Yes, ma'am. Well P is physical -- I
8 don't know what any of this is.
9 Q. Okay. I guess let me ask you -- I'll put
10 it on the overhead and ask you my question.
11 A. Okay.
12 Q. In answer to my question, you had said
13 three wells on the property. This exhibit shows
14 Well P, Well HM, Well E, and Well CC. Do you know
15 if there is 4 wells on the property?
16 A. There could be. I thought there was
17 three.
18 Q. Okay. And do you know specifically where
19 those wells are?
20 A. Yes, ma'am. There is -- where the pump
21 house is. There is one down by the end of the
22 cabins. And then there is one out behind the
23 kitchen. Those are the three that I know about.
24 Q. How are -- does Angel Valley have weeds?
25 A. Lots of them.

1 Q. How are the weeds handled?
2 A. They're usually pulled or raked up. And
3 we use saltwater on our weeds.
4 Q. Have there been weeds in the area of the
5 sweat lodge itself? And I put back up Exhibit 144.
6 Have you been involved in pulling weeds?
7 A. Oh, yeah.
8 Q. And have you pulled weeds in the area of
9 the sweat lodge?
10 A. Yes, ma'am.
11 Q. On very many occasions?
12 A. Since the sweat lodge, yes, I have.
13 Q. Okay. And prior to then?
14 A. No.
15 Q. You talked about using saltwater for
16 weeds. Explain to the jury how that works.
17 A. You put about four cups of saltwater in a
18 full container -- a five-gallon bucket of water and
19 stir it until it melts. And then you pour it into
20 a sprayer and you spray the ground. And you have
21 to do it four days in a row. And it kills the
22 weeds.
23 Q. Who taught you to do that?
24 A. Rotillo, one of our landscapers.
25 Q. And at whose direction have you used

1 saltwater to take care of the weeds?
2 A. Michael Hamilton.
3 Q. Do you recall when it was that
4 Mr. Hamilton instructed you to use saltwater to
5 take care of the weeds?
6 A. That was probably September of last year
7 is when I started taking over pulling weeds and
8 stuff.
9 Q. Of 2010?
10 A. Of 2010.
11 Q. Do you know how the weeds at Angel Valley
12 were taken care of before your involvement in
13 September of 2010?
14 A. Not before my involvement. No.
15 Q. Did you ever use any weed killer to take
16 care of the weeds?
17 A. No.
18 Q. Did you ever use any poisons in the areas
19 accessible to the guests?
20 A. No. Except in crawl spaces and attics.
21 Q. And then looking, again, at the fire
22 that's depicted in Exhibit 145, did you see
23 participants gather around that fire?
24 A. I'm going to say no because I'm not clear
25 on it.

1 Q. Okay. Well, you talked about the other
2 fire where writings were thrown into?
3 A. Yes.
4 Q. Did you see participants gather around
5 that other fire?
6 A. No. I did not see them personally.
7 Q. Then what did you see about that other
8 fire?
9 A. All I saw when I -- was papers and stuff
10 flying, ashes.
11 Q. Did you ever see participants gathered
12 around the rock burning fire or in the area of?
13 A. In the area of, yes.
14 Q. And to what -- in what manner did you see
15 them around that fire?
16 A. Well, they were laying on the ground.
17 Q. This is after the ceremony?
18 A. Yeah.
19 Q. And how about before the sweat lodge
20 ceremony began? Did you see participants in the
21 area of that fire?
22 A. Well, they were in the area because they
23 were just on this side of it burning their papers.
24 Q. Do you recall smoke coming from this
25 rock-burning fire?

1 A. Yes, ma'am.
2 Q. Do you recall which way the smoke was
3 blowing?
4 A. At different times in all directions.
5 Q. I'll put on the overhead Exhibit 552. So
6 this is the fire that we're talking about. Do you
7 recall whether the smoke was blowing towards the
8 sweat lodge?
9 A. At times, yeah.
10 Q. And do you recall how much smoke?
11 A. No, ma'am.
12 Q. What do you recall, if anything, about
13 the smoke from that rock-burning fire?
14 A. Nothing that -- that I haven't seen
15 before in all fires. Nothing that stands out in my
16 mind.
17 Q. Okay. And have you been at the scene
18 where that sweat lodge was in October of 2009 --
19 have you been at that area or other sweat lodges
20 where there was a fire in that same fire pit?
21 A. Yes, ma'am.
22 Q. With a fire burning in it?
23 A. Yes, ma'am.
24 Q. Just a couple more questions about the
25 coverings used on the sweat lodge. Did you ever

1 assist in taking the coverings down?
2 A. No, ma'am.
3 Q. Did you ever assist in folding them up?
4 A. Yes, ma'am.
5 Q. And when was that?
6 A. That was when I was in that other sweat.
7 Q. And after you assisted in folding up
8 those coverings, did you have anything further to
9 do with them?
10 A. We folded them up and put them in the
11 pump house.
12 Q. That's that same pump house --
13 A. Yes.
14 Q. -- you circled on the map earlier?
15 A. Yes, ma'am.
16 Q. Did you ever assist in pulling the
17 coverings out of that pump house?
18 A. No, ma'am.
19 MS. POLK: Thank you, Your Honor.
20 Thank you, Ms. Foster.
21 THE COURT: Thank you, Counsel.
22 Mr. Kelly.
23 MR. KELLY: Thank you, Your Honor.
24 ///
25 ///

1 CROSS-EXAMINATION
2 BY MR. KELLY:
3 Q. Ms. Foster, my name is Tom Kelly. I
4 represent, along with Luis and Truc and Miriam,
5 James Ray.
6 Okay. You and I have never met; correct?
7 A. No, sir.
8 Q. And we've never had a chance to discuss
9 this --
10 A. No, sir.
11 Q. -- 2009 sweat lodge; correct?
12 MS. POLK: Your Honor, I object. They did
13 have a chance.
14 MR. KELLY: I'll rephrase my question.
15 Q. You and I have never met to discuss
16 this 2009 incident; correct?
17 A. No, sir.
18 Q. Now, Ms. Foster, also the first time that
19 you were ever asked by anyone from the State of
20 Arizona anything about weeds was just a few minutes
21 ago; correct?
22 A. Yes.
23 Q. The first time that you were asked
24 anything about the use of pesticides at
25 Angel Valley was just a couple minutes ago;

1 correct?

2 **A. Yes, sir.**

3 **Q.** The first time you were asked any
4 questions about how the tarps were stored was
5 today; correct?

6 **A. Yes, sir.**

7 **Q.** The first time that you were asked any
8 questions about whether the well water made you
9 sick was today?

10 **A. Yes, sir.**

11 **Q.** The first time you heard any questions
12 about whether the food that was used in October
13 of 2009 made you sick was today; correct?

14 **A. Yes, sir.**

15 **Q.** And the first time that you were asked
16 any questions about becoming ill because being in
17 the presence of the smoke from these fires was
18 today; correct?

19 **A. Yes, sir.**

20 **Q.** Now, one thing we know, Ms. Foster, is
21 that you were never inside the sweat lodge on
22 October 8, 2009. Correct?

23 **A. Yes, sir.**

24 **Q.** All right. You also know from previous
25 experience that a person inside of a sweat lodge is

162

1 subjected to steam; correct?

2 **A. Yes, sir.**

3 **Q.** In other words, when you were standing
4 outside those fires on the exterior of the sweat
5 lodge and asked those questions, there was no
6 steam; correct?

7 **A. No, sir.**

8 **Q.** And I saw the photograph, Exhibit 552.
9 That's out in the open air; correct?

10 **A. Yes, sir.**

11 **Q.** Now, Ms. Foster, I believe that you've
12 lived here in the Verde Valley for about 20 years.
13 Correct?

14 **A. Yes, sir.**

15 **Q.** And you live over in Cottonwood or
16 Clarkdale area.

17 **A. Cottonwood.**

18 **Q.** You drive every day to Angel Valley;
19 correct?

20 **A. Yes, sir.**

21 **Q.** But you would agree with me that the
22 habitats and environments are very similar between
23 Angel Valley and your home; correct?

24 **A. Correct.**

25 **Q.** And you told us about the problem with

1 critters at Angel Valley. Do you recall that
2 testimony?

3 **A. Uh-huh. Yes, sir.**

4 **Q.** And your 20 years here in the
5 Verde Valley, you've run into a lot of different
6 types of critters; correct?

7 **A. Yes, sir.**

8 **Q.** And in order to control those critters,
9 you're going to have to do something if you live
10 here; correct?

11 **A. Yes, sir.**

12 **Q.** And the one alternative is to use some
13 type of chemical control method. And I believe you
14 said Angel Valley you found some d-CON that was
15 used to control mice and rats; correct?

16 **A. Yes, sir.**

17 **Q.** And then the yellow stuff that has a
18 different name; correct?

19 **A. Yes, sir.**

20 **Q.** And in addition to that, you mentioned
21 that you found in the shop some ANDRO (sic
22 throughout); correct?

23 **A. Yes, sir.**

24 **Q.** Now, my recollection of ANDRO is that is
25 the insecticide that has the dead ant laying on its

164

1 back.

2 **A. Yes, sir.**

3 **Q.** And it comes in a granule form; correct?

4 **A. Yes, sir.**

5 **Q.** And I believe in different sizes. But
6 you can get it up to, like, a gallon jug; correct?

7 **A. Yes, sir.**

8 **Q.** And then you take these granules and you
9 spread them in the dirt around the affected area.
10 And the idea is that an ant is going to get ahold
11 of that, carry it off, take it to the queen, and
12 kill the colony; correct?

13 **A. Yes, sir.**

14 **Q.** And you told us that you found some of
15 that ANDRO in the shop in June of 2010; correct?

16 **A. Yes, sir.**

17 **Q.** Now, I understand also from your
18 testimony that you only took over the maintenance
19 and some of the landscaping duties last summer. Is
20 that correct?

21 **A. Yes, sir.**

22 **Q.** Prior to that time you were working in
23 the kitchen?

24 **A. In the kitchen and as a housekeeper.**

25 **Q.** So the source of that ANDRO you have no

1 idea; correct?
 2 **A. No, sir.**
 3 **Q.** And its use prior to June of 2010 you
 4 would have no knowledge; correct?
 5 **A. No, sir.**
 6 **Q.** And was it one of those paper containers?
 7 **A. No, sir. It was a little one like this.**
 8 **Q.** And I believe those are about quart size.
 9 Correct?
 10 **A. Yes, sir.**
 11 **Q.** I'm going to put up Exhibit 140.
 12 And may I approach the witness,
 13 Your Honor?
 14 THE COURT: Yes, you may.
 15 **Q.** BY MR. KELLY: Ms. Foster, if it's easier
 16 to look at the exhibit itself instead of that
 17 screen, go ahead. So you've worked at Angel Valley
 18 for about a year and a half; correct?
 19 **A. Almost three years, sir.**
 20 **Q.** That's right. April of 2008, a year and
 21 a half before October of 2009?
 22 **A. Yes, sir.**
 23 **Q.** That was my fault. So it will be three
 24 years this April?
 25 **A. Yes.**

1 **Q.** And during that time you've gotten to
 2 know the general grounds of Angel Valley quite
 3 well; correct?
 4 **A. Yes, sir.**
 5 **Q.** And you know that Angel Valley on some
 6 sides is surrounded by forest service land;
 7 correct?
 8 **A. Yes, sir.**
 9 **Q.** And that's land owned by the
 10 United States Department of Agriculture; correct?
 11 **A. Yes, sir.**
 12 **Q.** And, in fact, when you cross Oak Creek on
 13 this Exhibit 140 where it says, north, that's
 14 actually on forest service land; correct?
 15 **A. Yes, sir.**
 16 **Q.** And that's the part out on public land
 17 that Angel Valley and its employees created sites
 18 for the Vision Quest experience; correct?
 19 **A. I can't answer that. I didn't put people**
 20 **out.**
 21 **Q.** Let me try this again. You've been there
 22 for three years; correct?
 23 **A. Yes.**
 24 **Q.** During that time you've walked around
 25 Angel Valley; correct?

1 **A. Yes, sir.**
 2 **Q.** And you know where these Vision Quest
 3 sites are; correct?
 4 **A. I don't know where the sites are, but I**
 5 **know they're on forest service land.**
 6 **Q.** You haven't crossed the creek and went
 7 out --
 8 **A. Yes, sir. But I don't know the specific**
 9 **sites.**
 10 **Q.** Okay. So let's just talk about the area.
 11 See it highlighted up here --
 12 **A. Yes.**
 13 **Q.** -- where it says, north on Exhibit 140?
 14 Do you see that?
 15 **A. Uh-huh.**
 16 **Q.** You have to yes or no.
 17 **A. Yes, sir. I'm sorry.**
 18 **Q.** You've been out there. And while you're
 19 out there, you've noticed that, just like your
 20 home, there are critters out in that one country;
 21 correct?
 22 **A. Yes, sir.**
 23 **Q.** There are insects out there; correct?
 24 **A. Yes, sir.**
 25 **Q.** And you've seen ants out there; correct?

1 **A. Yes.**
 2 **Q.** That's forest service land. So
 3 Angel Valley doesn't have to worry about
 4 controlling the bugs and critters on forest service
 5 land; correct?
 6 **A. Yes, sir.**
 7 **Q.** Now, right below where it says, north, it
 8 says, vegetable garden; correct?
 9 **A. Yes.**
 10 **Q.** Has that been in existence during your
 11 entire three-year employment with Angel Valley?
 12 **A. Yes, sir.**
 13 **Q.** Who is responsible for taking care of it?
 14 **A. That would be Kirsten, our chef, and**
 15 **Lolita, a work volunteer.**
 16 **Q.** You have to say her name again for me.
 17 **A. Lolita.**
 18 **Q.** Lolita. And have you ever helped them
 19 out?
 20 **A. Yes, sir.**
 21 **Q.** And like any garden, I suppose that this
 22 garden gets watered from one of these wells.
 23 Correct?
 24 **A. Yes, sir.**
 25 **Q.** They use a hose or some type of a

1 sprinkler system?
 2 **A. We use hoses.**
 3 **Q.** And when you put water on the ground in
 4 central Arizona, you're going to get bugs; correct?
 5 **A. Yes, sir.**
 6 **Q.** And so you have to control the insects in
 7 that garden as well; correct?
 8 **A. No, sir.**
 9 **Q.** Well, somehow you have to make sure they
 10 don't eat your squash or something; correct?
 11 **A. We organic garden.**
 12 **Q.** Well, I understand what organic gardening
 13 is. But my question is, you have a problem -- if
 14 you're organic gardening, you have a problem with
 15 insects; correct?
 16 **A. Yes, sir.**
 17 **Q.** So you have to figure out some way to
 18 reduce the impact of those insects; correct?
 19 **A. No, sir.**
 20 **Q.** Let them eat what they want?
 21 **A. Absolutely.**
 22 **Q.** And right next to the vegetable garden,
 23 it says, pond; correct?
 24 **A. Yes.**
 25 **Q.** Now, describe that pond to us.

1 **A. It's a whole in the ground. There is no**
 2 **water in it. At some point we want to make it into**
 3 **a pond. It is not a pond at this point.**
 4 **Q.** And Oak Creek is depicted just north of
 5 the vegetable garden with two fellows swimming in
 6 it on Exhibit 140; correct?
 7 **A. Yes.**
 8 **Q.** And Oak Creek in parts are deep enough to
 9 swim in; correct?
 10 **A. Yes.**
 11 **Q.** It's pretty much a year-round creek;
 12 correct?
 13 **A. Yes, sir.**
 14 **Q.** And, again, in regards to the critters
 15 that you described that you have to control, the
 16 presence of that water draws animals into Oak
 17 Creek; correct?
 18 **A. Yes, sir.**
 19 **Q.** And insects; correct? Correct?
 20 **A. Yes, sir.**
 21 **Q.** And I note that Exhibit 140 -- and
 22 Ms. Polk asked you these questions. It shows the
 23 location of the sweat lodge. Do you see that?
 24 **A. Yes, sir.**
 25 **Q.** And, again, that's in close proximity to

1 Oak Creek; correct?
 2 **A. Yes, sir.**
 3 **Q.** Close proximity to the vegetable garden;
 4 correct?
 5 **A. Yes, sir.**
 6 **Q.** And someday going to be pond; correct?
 7 **A. Yes, sir.**
 8 **Q.** Now, I want to take you back a little
 9 bit. You told us, Ms. Foster, that you're a
 10 convicted felon; correct?
 11 **A. Yes, sir.**
 12 **Q.** And you've been to prison; correct?
 13 **A. Yes, sir.**
 14 **Q.** And so when you got out of prison, as a
 15 convicted felon it was difficult to find a job;
 16 correct?
 17 **A. Yes, it was.**
 18 **Q.** I believe you've been through 10th grade
 19 in high school. Got your GED in about 1983?
 20 **A. Yes, sir.**
 21 **Q.** So with a GED, felony, and prison
 22 history, you were saddled with the hurdle of going
 23 out and trying to find a job; correct?
 24 **A. Yes, sir.**
 25 **Q.** And fortunately you ran into Michael and

1 Amayra Hamilton; correct?
 2 **A. Yes, sir.**
 3 **Q.** You began working for them. And I should
 4 tell -- or explain this to the jury. Throughout
 5 your lifetime, your employment history includes
 6 such things as working in a kitchen; correct?
 7 **A. Yes, sir.**
 8 **Q.** I think working as a contract laborer of
 9 different types; correct?
 10 **A. I have had my own cleaning service for**
 11 **almost 30 years.**
 12 **Q.** And cleaning houses; correct?
 13 **A. Yes, sir.**
 14 **Q.** So with that experience, then, when you
 15 were out looking for a job after getting out of
 16 prison, you somehow contacted Michael and Amayra
 17 Hamilton; correct?
 18 **A. Yes, sir.**
 19 **Q.** How did you find out about it?
 20 **A. My stepson was chef there and called me**
 21 **and said they needed some help. And so I went to**
 22 **work.**
 23 **Q.** And you went to work for them in April
 24 of 2008?
 25 **A. Yes, sir.**

1 Q. Was that your first job after you were
2 released from prison?
3 A. **No, sir.**
4 Q. Was it the best job you've had since?
5 A. **Oh, absolutely.**
6 Q. And I think you told us that it's one of
7 the best jobs you've had your entire life; correct?
8 A. **I enjoy it. Yes.**
9 Q. All right. And you were -- I take it
10 from your testimony, beginning in April 2008 you
11 went from kitchen help all the way up to the status
12 where you're at now; correct?
13 A. **Yes, sir.**
14 Q. In fact, you're even referenced on the
15 website. Did you know that?
16 A. **Yes, sir.**
17 Q. And you indicate that you came to
18 Angel Valley to find freedom from the prison I had
19 created in my life. And I won't read it all. But
20 it's just been a great influence on you; correct?
21 A. **Absolutely. Yes, sir.**
22 MS. POLK: Is that an exhibit?
23 MR. KELLY: No.
24 MS. POLK: Your Honor, the state would request
25 that this be marked and admitted as an exhibit.

1 MR. KELLY: Judge, we can talk about it later.
2 I object.
3 THE COURT: All right.
4 Q. BY MR. KELLY: And as a result,
5 Ms. Foster, the fact this is a good job, you would
6 like to keep it; correct?
7 A. **If the Lord wants me there, absolutely.**
8 **Yes, sir.**
9 Q. And you understand that the James Ray
10 International incident of October of 2009 has been
11 a significant problem for Angel Valley; correct?
12 A. **Yes, sir. I do.**
13 Q. You know that Angel Valley has been sued
14 by 10 of the participants; correct?
15 A. **Yes, sir.**
16 Q. You know that you're business that you're
17 directly involved with, the business at
18 Angel Valley, has dropped off greatly; correct?
19 A. **Yes, sir.**
20 Q. You know that Michael and Amayra Hamilton
21 are doing anything and everything in an attempt to
22 save Angel Valley from financial ruin; correct?
23 A. **Yes, sir.**
24 Q. And you like Michael and Amayra Hamilton;
25 correct?

1 A. **Absolutely. Yes.**
2 Q. They're good friends of yours; correct?
3 A. **Yes, sir.**
4 MR. KELLY: Can we put back up Exhibit 552.
5 Q. Ms. Foster, you recognize Exhibit 552 as
6 a photograph taken back during October of 2009;
7 correct?
8 A. **Yes, sir.**
9 Q. And you told us that Debbie Mercer, your
10 friend, is standing in front of the flap, which is
11 the doorway to the tent; correct?
12 A. **Yes, sir.**
13 Q. And she is this person right here;
14 correct?
15 A. **Yes, sir.**
16 Q. Now, is it your testimony that the other
17 folks in this exhibit are Dream Team members?
18 May I approach, Judge?
19 THE COURT: Yes.
20 MR. KELLY: And perhaps we can also put up
21 145.
22 Q. I'm handing you Exhibit 145 and
23 Exhibit 552. 145 shows the people better, I
24 believe, Ms. Foster?
25 A. **Yes, sir.**

1 Q. Now, looking at 145 --
2 A. **Yes.**
3 Q. -- I'm going to point on the screen. But
4 if you need to look at the photograph, do that.
5 Okay?
6 This person is a Dream Team member;
7 correct?
8 A. **Yes, sir.**
9 Q. And you know that because of the blue
10 T-shirt; correct?
11 A. **Yes, sir.**
12 Q. This person is a Dream Team member;
13 correct?
14 A. **Yes, sir.**
15 Q. This person back here with the black
16 T-top -- do you know whether or not she's a Dream
17 Team member?
18 A. **I believe she is.**
19 Q. Then this person here. Do you know?
20 A. **She's also a Dream Team member.**
21 Q. And this is Ted; correct?
22 A. **That's Ted Mercer.**
23 Q. So he's not a Dream Team member; correct?
24 A. **No.**
25 Q. So if we could go back to Exhibit 145.

1 So would you now, Ms. Foster, tell us which of
2 those Dream Team members is the doctor that you
3 described on direct examination. We can blow them
4 up if that would help.

5 **A. Yeah. Because I can't really see their**
6 **faces.**

7 **Q.** Does that help? One of those two ladies?

8 **A. To be honest, I don't know. I can't see**
9 **their faces well enough to --**

10 **Q.** Maybe we can blow them up. Does that
11 help?

12 **A. She looks like the lady that said she was**
13 **a nurse, not a doctor.**

14 **Q.** Okay. So we've identified who you
15 believe is a nurse. What about the doctor you told
16 us about?

17 **A. I don't see her there.**

18 **Q.** Is it your testimony, then, that there
19 were other Dream Team members there other than
20 these that we identified in Exhibit 145?

21 **A. Yes, sir. There was.**

22 **Q.** And you identified the nurse. You don't
23 see the doctor. My next question is, out of these
24 individuals, who were the two Dream Team members
25 who were pushing the lady with the white bathing

1 suit back into the sweat lodge?

2 **A. The lady with the curly hair. I don't**
3 **know if that's the same lady or not because her**
4 **hair is up.**

5 **Q.** Well, you don't have any reason to
6 dispute that this photograph was taken on
7 October 8, 2009; correct?

8 **A. Okay. This lady right here.**

9 **Q.** She was pushing someone inside?

10 **A. That's not the same lady. This is not**
11 **the same lady.**

12 **Q.** What about this lady?

13 **A. I don't know who they were. I can't say**
14 **for positive sure.**

15 **Q.** Well, first of all, ma'am, you would
16 agree with me that if someone is pushing someone
17 against their will into an environment where they
18 don't want to go, that's a significant concern;
19 correct?

20 **A. Yes, sir.**

21 **Q.** You would agree with me that that's
22 something that the Yavapai County Sheriff's Office
23 should know about; correct?

24 **A. Yes, sir.**

25 **Q.** That possibly could be a crime, couldn't

1 it, to unlawfully detain a person against their
2 will?

3 **MS. POLK:** Objection. Calls for speculation.

4 **THE COURT:** Overruled.

5 You may answer that if you can.

6 **Q.** BY MR. KELLY: Correct?

7 **A. Yes.**

8 **Q.** And you were interviewed by
9 Detective Barbaro on October 8, 2009. And you
10 didn't make any mention of that, did you?

11 **A. I don't think so. No, sir.**

12 **Q.** In fact, you told Detective Barbaro on
13 October 8, 2009, at about 11:30 p.m., that the
14 sweat lodge ceremony started around 4:00 p.m. and
15 ended at approximately 6:00 p.m.; correct?

16 **A. Yes, sir.**

17 **Q.** And that's different than your testimony
18 today; correct?

19 **A. I was in shock, sir.**

20 **Q.** Okay. Well, while in shock, then, you
21 also told Detective Barbaro that James Ray would
22 open the door to let air in and let people leave if
23 they wanted to.

24 Do you recall telling him that?

25 **A. Yes, sir.**

1 **Q.** And that's true; correct?

2 **A. To my knowledge, yes, sir.**

3 **Q.** And you told him that during one of the
4 breaks, one subject was so disoriented that he
5 crawled onto the hot rocks, burning his arm. Do
6 you recall that?

7 **A. Yes, sir.**

8 **Q.** Now, during that statement to the
9 detective on October 8, you made no mention of a
10 doctor; correct?

11 **A. Yes, sir.**

12 **Q.** You made no mention of the nurse Dream
13 Team member; correct?

14 **A. Yes, sir.**

15 **Q.** You made no mention of two Dream Team
16 people pushing someone back into the sweat lodge;
17 correct?

18 **A. Yes, sir.**

19 **Q.** And you made no mention of someone laying
20 outside screaming, I'm going to die; I'm going to
21 die; correct?

22 **A. No, sir.**

23 **Q.** You made no mention of your testimony
24 that James Ray did nothing after the sweat lodge to
25 help these folks; correct?

1 **A. No, sir.**
 2 **Q.** You made no mention of your testimony
 3 today that you went up to get ice water to cure --
 4 or to help heal the person who burned his hands on
 5 the rocks; correct?
 6 **A. No, sir.**
 7 **Q.** And I've characterized this correctly.
 8 This is a brief conversation. And that's what you
 9 said, and that's all you were asked; correct?
 10 **A. Yes, sir.**
 11 **Q.** Now, the next time you were interviewed,
 12 Ms. Foster, was October 26, 2009; correct?
 13 **A. Sounds right. Yes.**
 14 **Q.** And on October 26, 2009, during that
 15 interview there was an attorney present, wasn't
 16 there?
 17 **A. Yes, sir.**
 18 **Q.** And that attorney was paid for or
 19 retained by Michael and Amayra Hamilton; correct?
 20 **A. Yes, sir.**
 21 **Q.** And these are the same people you
 22 described that you worked for; correct?
 23 **A. Yes, sir.**
 24 **Q.** Why did you have to have a lawyer with
 25 you when you're making a statement to the

1 detectives? It was Detective Diskin and
 2 Detective Polling.
 3 **A. You would have to ask Michael and Amayra**
 4 **that. I didn't hire the attorney. He was just in**
 5 **the room.**
 6 **Q.** Well, have you had a chance to look at
 7 your interview some three weeks after October 8,
 8 2009?
 9 **A. Yes, sir.**
 10 **Q.** Would you agree with me that it's
 11 substantially different than what you told
 12 Detective Barbaro on October 8, 2009?
 13 **A. Substantially different? Yes, sir. Not**
 14 **different. Just more to it.**
 15 **Q.** And then today, if we were to take your
 16 testimony today, there is a lot more to it some
 17 year and a half later than there was back on
 18 October 26, 2009; correct?
 19 **A. Probably different questions. Yes, sir.**
 20 MR. KELLY: Judge, I don't remember what time
 21 we started.
 22 THE COURT: You started about 20 till.
 23 **Q.** BY MR. KELLY: Between October 26th --
 24 well, let me back up. Between October 8, 2009,
 25 through today, you've been employed by

1 Angel Valley. True statement?
 2 **A. Yes, sir.**
 3 **Q.** Between October 8th, 2009, and
 4 October 26th, 2009, you were employed by
 5 Angel Valley; correct?
 6 **A. Yes, sir.**
 7 **Q.** It was during that time that you had
 8 conversations with Michael and Amayra Hamilton
 9 about the presence of their lawyer during your
 10 interview with the government; correct?
 11 **A. Yes, sir.**
 12 **Q.** In other words, this lawyer just didn't
 13 show up because he didn't have anything else to do.
 14 He was there for some purpose that you don't know
 15 about; correct?
 16 **A. Exactly.**
 17 **Q.** And you told us earlier you understand
 18 the Hamiltons have been sued; correct?
 19 **A. Yes, sir.**
 20 **Q.** And you told us that it wasn't until June
 21 of 2010 that you took over duties associated with
 22 maintenance and repair of Angel Valley; correct?
 23 **A. Yes, sir.**
 24 **Q.** So prior to that time you don't know how
 25 weeds were controlled; correct?

1 **A. That's right.**
 2 **Q.** You don't know how the insects were
 3 controlled; correct?
 4 **A. That's correct.**
 5 **Q.** You don't know how the critters that you
 6 described were controlled; correct?
 7 **A. That's correct.**
 8 **Q.** And I believe you told us that it was
 9 Michael Hamilton himself who would go out and buy
 10 this stuff, not you; correct?
 11 **A. Yes, sir.**
 12 **Q.** And when I say "this stuff," I'm talking
 13 about the pesticides or herbicides, if any, or any
 14 rat poisoning or anything like that. Correct?
 15 **A. Yes, sir.**
 16 **Q.** Were you present during any time in which
 17 any of the cabins were built at Angel Valley?
 18 **A. No, sir.**
 19 **Q.** I'm going to put up Exhibit --
 20 Exhibit 488. Do you see that stack of wood to the
 21 right?
 22 **A. Yes, sir.**
 23 **Q.** Does that wood pile appear to be
 24 consistent with the wood used to construct the
 25 cabins?

1 **A. Yes, sir.**

2 **Q.** Do you know when that wood pile was
3 constructed, the wood pile itself?

4 **A. The exact time, no, sir. But it was just**
5 **a few days before the lodge.**

6 **Q.** Okay. So sometime during October of 2009
7 you noticed that this pile of wood had been stacked
8 near where the lodge was; correct?

9 **A. Yes.**

10 **Q.** By the way, did you notice these other
11 piles of wood which appear to be lumber and not any
12 type of sticks? Were they placed there
13 approximately the same time?

14 **A. Yes, sir.**

15 **Q.** I believe you told us on direct that
16 after the EMS had left, you had an opportunity to
17 be with Ted and Debbie and Sarah Mercer. Correct?

18 **A. Yes, sir.**

19 **Q.** And, in fact, Debbie Mercer began to feel
20 somewhat ill, so she went to the hospital back on
21 October 8 or October 9, 2009; correct?

22 **A. Yes, sir.**

23 **Q.** And she was close to the fire; correct?

24 **A. Yes, sir.**

25 **Q.** And she became nauseous and some other

1 medical problems. So she went into the hospital;
2 correct?

3 **A. Yes, sir.**

4 **Q.** And then you took care of Sarah for the
5 evening; correct?

6 **A. Yes, sir.**

7 **Q.** And Sarah at that time was just under 18
8 years old; correct?

9 **A. Yes, sir.**

10 **Q.** During that time Ted told you that he had
11 a concern about the wood used during the sweat
12 lodge; correct?

13 **A. He didn't tell me that. No.**

14 **Q.** You guys didn't talk about that?

15 **A. No.**

16 **Q.** But you knew who made that statement;
17 correct? Well, you know now?

18 **A. I do now.**

19 **Q.** And you also know that Ted had a concern
20 about the storage of the tarps with rat poisoning;
21 correct?

22 **A. I found that out a few days ago.**

23 **Q.** You didn't know prior to that?

24 **A. No, sir.**

25 **Q.** Never spoke with the Mercers?

1 **A. No. We don't -- we see each other all**
2 **the time, but we don't speak about it at all.**

3 **Q.** When -- Exhibit 281 and Exhibit 282.

4 When you were putting together the lemon water, the
5 electrolyte water, the regular water, the
6 watermelon, and the oranges for the sweat lodge,
7 you told us that your boss in the kitchen told you
8 to do that; correct?

9 **A. Yes, sir.**

10 **Q.** And what's your boss's name?

11 **A. Kirsten Johnson.**

12 **Q.** So Kirsten said, take this stuff down
13 there?

14 **A. Yes.**

15 **Q.** And that's what you did; correct?

16 **A. Yes, sir.**

17 **Q.** And you didn't have to carry it? You had
18 a golf cart?

19 **A. Yeah. I had a golf cart.**

20 **Q.** And do you recall -- or did a JRI, James
21 Ray International, employee help you do that?

22 **A. No, sir.**

23 **Q.** You did that all on your own?

24 **A. Yes, sir.**

25 **Q.** So you don't -- did you ever meet a lady

1 by the name of Melinda Martin?

2 **A. Yes, sir.**

3 **Q.** She was the event coordinator?

4 **A. Correct.**

5 **Q.** She didn't help you do that?

6 **A. No, sir.**

7 **Q.** You did it all by yourself; correct?

8 **A. Yes, sir.**

9 **Q.** And when you got down to the sweat lodge,
10 you sat on a log; correct?

11 **A. Yes, sir.**

12 **Q.** I'm going to try to put up Exhibit 144.

13 And to make it clear, Ms. Foster, you
14 didn't know Kirby Brown; correct?

15 **A. No, sir.**

16 **Q.** You didn't know James Shore; correct?

17 **A. No, sir.**

18 **Q.** And you didn't know Liz Neuman; correct?

19 **A. No, sir.**

20 **Q.** Now, in this photograph the log is this
21 log right here; correct?

22 **A. Yes, sir.**

23 MS. POLK: Your Honor, the state will
24 stipulate to the admission of Exhibit 508.

25 THE COURT: 508 is admitted.

1 (Exhibit 508 admitted.)
 2 MR. KELLY: May I publish it, Judge?
 3 THE COURT: Yes.
 4 Q. BY MR. KELLY: So, Ms. Foster, do you
 5 recognize this --
 6 If I may approach, Judge?
 7 THE COURT: You may.
 8 Q. BY MR. KELLY: Take a look at
 9 Exhibit 508. I'm going to ask you, do you see the
 10 log in 508?
 11 A. Yes, sir.
 12 Q. That's the log that you were seated on
 13 when you came back down with the fruit and
 14 electrolytes; correct?
 15 A. Yes, sir.
 16 Q. And the reason that you did that is that
 17 you knew that you had to have clean stuff to keep
 18 people hydrated; correct?
 19 A. Yes, sir.
 20 Q. And that's what -- when you went down
 21 there, that's originally what you were going to do
 22 is make sure that these folks were hydrated;
 23 correct?
 24 A. Yes, sir.
 25 Q. Now, you told us that the distance

1 between the log and the opening of the tent -- and
 2 do I have the opening right --
 3 A. Yes, sir.
 4 Q. Right next to those laundry baskets full
 5 of towels; correct?
 6 A. Yes, sir.
 7 Q. And you told us that that distance is how
 8 far?
 9 A. About from me to you. Maybe from me to
 10 her at this point. But this makes it look a lot
 11 further than it is.
 12 Q. Well, let's take a look at this trash
 13 can. Would you agree with me that trash can is
 14 about 4 feet tall?
 15 A. Yes.
 16 Q. If we laid that down on its side, do you
 17 think it might be further than me to you?
 18 A. Yes, sir.
 19 Q. Maybe as much as in this area perhaps?
 20 A. No, sir. That's too far.
 21 Q. This is too far.
 22 A. Right about where you are there.
 23 Q. A trash can is 4 feet; correct?
 24 A. About.
 25 Q. And I'm going to have you -- is that

1 around 4 feet?
 2 A. Yes, sir.
 3 Q. Okay. Now, you see the trash can if we
 4 laid it down and you're at the door? And I'm going
 5 to be sitting on the log. Okay?
 6 A. Okay.
 7 Q. So would you agree with me that that log
 8 is some distance at least past the entryway to the
 9 courtroom?
 10 A. Yes, sir.
 11 Q. What do you think? Tell me when to stop.
 12 A. I still think you're too far.
 13 Q. Okay. Tell me when to stop. I'm trying
 14 to get your opinion.
 15 A. No. I said right at the gate just behind
 16 this gentleman right here.
 17 Q. Right here?
 18 A. Yes.
 19 Q. It's right here?
 20 A. Right about there.
 21 Q. And this is 28 feet. Do you think that's
 22 enough?
 23 A. Thereabouts. Yes.
 24 Q. Okay. So when you came back down and sat
 25 on this log, you were approximately 28, 30 feet

1 away from the entrance; correct?
 2 A. Yes, sir.
 3 Q. Now, if we put up Exhibit 414, Mr. Ray is
 4 right inside -- right inside the entrance; correct?
 5 A. Yes, sir.
 6 Q. And when you're sitting on the log and
 7 these people are coming out -- I went too far --
 8 you're looking at approximately this distance and
 9 listening to what James Ray has to say; correct?
 10 A. Yes.
 11 Q. And it's at this distance that you hear
 12 him say, you can do it? You're stronger than your
 13 body? Correct?
 14 A. Yes, sir.
 15 Q. And it's at this distance that you're
 16 able to count the number of rocks that are going in
 17 and out of the sweat lodge; correct?
 18 A. Yes, sir.
 19 Q. And it's at this distance that -- well,
 20 no. Let me back that up. So that's the minimum.
 21 Mr. Ray is here; correct?
 22 A. Yes, sir.
 23 Q. Do you know the width -- the diameter of
 24 the sweat lodge?
 25 A. No, I do not.

1 Q. Do you have any reason to dispute that
2 it's 23 feet?

3 A. No, sir, I don't.

4 Q. So if this is 28 feet, it would be about
5 this distance that you would have to hear someone
6 make comments --

7 A. Yes, sir.

8 Q. -- from the backside of the sweat lodge;
9 correct?

10 A. Yes, sir.

11 Q. You would agree with me that people who
12 were closer in the sweat lodge may have a better
13 ability to hear what happened; correct?

14 A. Yes, sir.

15 Q. These rocks, we have some photographs of
16 them. Perhaps 520. Now, first of all, I don't
17 know if you've ever seen this exhibit before. Have
18 you?

19 A. No, sir.

20 Q. Okay.

21 May I approach, Judge?

22 THE COURT: Yes.

23 Q. BY MR. KELLY: You told us on direct
24 that -- well, let me ask you this question before I
25 there.

1 And if we could put up Exhibit 144 first.

2 You told us the fire here depicted on
3 Exhibit 144 is the source of the rocks; correct?

4 A. Yes, sir.

5 Q. And it's from -- and would you agree with
6 me that the fire is a little bit closer to the flap
7 than your -- the log you were seated on?

8 A. Yes. Yes, sir.

9 Q. How much closer? Three or four feet?

10 A. About.

11 Q. So somewhere in here would you say?

12 A. Yes, sir.

13 Q. You told us that a rock would be taken
14 out with a pitchfork by Ted, taken to the flap,
15 handed to someone inside the sweat lodge; correct?

16 A. Yes, sir.

17 MR. KELLY: And now if we can put back up
18 Exhibit 520.

19 Q. And then taken from the entrance and put
20 in the hole in the middle of the sweat lodge;
21 correct?

22 A. Yes, sir.

23 Q. So, again, if 23 feet is the diameter,
24 which would be right here, the hole in the sweat
25 lodge is about halfway; correct?

1 A. Yes, sir.

2 Q. 11 feet or so; correct?

3 A. Yes, sir.

4 Q. So if the fire where the rocks are coming
5 from are about from me to you, we add 10, 11, 12
6 feet. And the rocks would have to travel the
7 distance from about where I am to where you are to
8 be in the center of the sweat lodge; correct?

9 A. Yes, sir.

10 Q. And when they do that, Ted has to fight
11 the heat of the fire get a rock on his pitchfork,
12 drag it across the ground to the door of the sweat
13 lodge, hand it to someone inside, presumably James
14 Ray. Then he has to -- you can't stand up in
15 there; correct?

16 A. Correct.

17 Q. Too short; correct?

18 A. Yes, sir.

19 Q. So he's got to -- he has to take that
20 rock and drag it across the ground and put it in
21 the middle; correct?

22 A. Yes, sir.

23 Q. It's your testimony that in the first
24 round, they did that 18 times; correct?

25 A. Yes, sir.

1 Q. So after Mr. Ray puts the rock in the
2 center, then he has to take the pitchfork out to
3 Ted. Ted has to go back, get a rock, and go back
4 and forth 18 times; correct?

5 A. Yes, sir.

6 Q. And during those 18 times, the flap to
7 the sweat lodge is open; correct?

8 A. Yes, sir.

9 Q. After the rocks are in, then it's
10 necessary to get water; correct?

11 A. Yes, sir.

12 Q. And, again, that would take some time,
13 would it not?

14 A. The buckets of water are already inside
15 the tent.

16 Q. Okay. Well, let's take a look, again, at
17 144. So it's your recollection that the buckets
18 used to put water on the hot rocks were lined up
19 inside the tent?

20 A. Well, outside the tent, and there should
21 have been a bucket inside the tent as well.

22 Q. Okay. So here's my point: You have 18
23 rocks back and forth, whatever time that takes.
24 And you have to add on to that time the time it
25 takes to get the bucket of water in, shut the flap,

1 and then pour the water on the rocks; correct?
 2 **A. Yes, sir.**
 3 **Q.** Now, given that, Ms. Foster, I would
 4 imagine that flap is open for quite a while.
 5 Correct?
 6 **A. Yes, sir.**
 7 **Q.** Do you have any idea how long? Seven
 8 minutes? Eight minutes?
 9 **A. No, sir. I don't have a clue.**
 10 **Q.** All right. It's during that time that
 11 you're seated on the log and you're able to look
 12 through the flap; correct?
 13 **A. Yes, sir.**
 14 **Q.** But you would agree with me it's a good
 15 length of time; correct?
 16 **A. Yes, sir.**
 17 **Q.** And, of course, when that happens -- when
 18 that door is open, you know that anybody who is
 19 inside that sweat lodge is free to leave; correct?
 20 **A. Yes, sir.**
 21 **Q.** And other than the two Dream Team members
 22 that you talked about, you never saw anyone else
 23 try to prevent anybody from leaving; correct?
 24 **A. No, sir.**
 25 **Q.** You didn't see anyone trying to push

1 anybody back in with the exception of the two Dream
 2 Team people; correct?
 3 **A. No, sir.**
 4 **Q.** And I want to make sure that it's not the
 5 Dream Team members we saw. That's not your
 6 testimony; correct?
 7 **A. I can't see their faces well enough to**
 8 **tell you that.**
 9 **Q.** Well, we know the detective never asked
 10 you to identify those two people who were trying to
 11 push somebody in there against their will; correct?
 12 **A. No, sir.**
 13 **Q.** And it was Debbie Mercer who jumped in
 14 and said, hey, leave her alone; correct?
 15 **A. Yes, sir.**
 16 **Q.** But at no time did Mr. Ray attempt to
 17 push that person in the lodge --
 18 **A. No, sir --**
 19 **Q.** -- correct?
 20 **A. -- not at all.**
 21 MR. KELLY: Your Honor, is this a good time?
 22 THE COURT: Yes. Thank you, Mr. Kelly.
 23 Ladies and gentlemen, we will take the
 24 afternoon recess. Please be reassembled at --
 25 we're going 15 minutes. So it will be 20 after.

1 Remember the admonition.
 2 And, Ms. Foster, remember the rule of
 3 exclusion.
 4 Thank you.
 5 (Recess.)
 6 THE COURT: The record will show the presence
 7 of the defendant, Mr. Ray, the attorneys, and the
 8 jury.
 9 Ms. Foster has returned to the witness
 10 stand.
 11 Mr. Kelly.
 12 MR. KELLY: Thank you, Judge.
 13 **Q.** Ms. Foster, it's been a long day on the
 14 witness stand; correct?
 15 **A. Yes, sir.**
 16 **Q.** And this was an emotional event for you;
 17 correct?
 18 **A. Yes, sir.**
 19 **Q.** You said also that you're -- I wrote it
 20 down. I've forgotten. You're half -- or excuse
 21 me. Quarter Cherokee and quarter --
 22 **A. Sioux.**
 23 **Q.** Sioux. And you told the detectives, in
 24 fact, you're about half Indian; correct?
 25 **A. Yes, sir.**

1 **Q.** Do sweat lodges, then, have a special
 2 meaning for you?
 3 **A. Yes, sir.**
 4 **Q.** And what I mean by that is do they have
 5 some other spiritual meaning beyond someone who is
 6 not an Indian may appreciate? Correct? Is that a
 7 poor question? Do you want me to rephrase it?
 8 **A. Yes, sir.**
 9 **Q.** Okay. As an Indian, you believe the
 10 sweat lodge has a spiritual purpose; correct?
 11 **A. Yes, sir.**
 12 **Q.** Does it offend you when someone charges
 13 money to be in a sweat lodge?
 14 **A. Yes, it does.**
 15 **Q.** And that's what I was trying to get at.
 16 You're not in agreement with James Ray
 17 International charging money and throughout the
 18 seminar ending with a sweat lodge; correct?
 19 **A. I'm not in agreement with anybody**
 20 **charging money for a sweat lodge. It has nothing**
 21 **to do with him personally.**
 22 **Q.** Right. And thank you for clarifying
 23 that. And this case is about James Ray
 24 International. But you're not in agreement with
 25 that; correct?

1 **A. No, sir.**
 2 **Q.** I want to ask you some questions directed
 3 at October of 2009, in that time frame, during the
 4 fall. You worked in the kitchen. And my question
 5 is, do you know who the landscaper was at that
 6 time?
 7 **A. That would be Rotillo Vasquez, I believe,**
 8 **is his name.**
 9 **Q.** Rotillo Vasquez?
 10 **A. Yes, sir.**
 11 **Q.** Is he still employed by Angel Valley?
 12 **A. Yes, sir.**
 13 **Q.** Who was the maintenance person, the job
 14 that you took over?
 15 **A. That would be Max Shoemaker, I think, is**
 16 **his last name.**
 17 **Q.** And if you know, ma'am, he's no longer
 18 employed by Angel Valley?
 19 **A. No, sir.**
 20 **Q.** And do you know where -- is he in the
 21 neighborhood here?
 22 **A. He's in Rimrock, I believe.**
 23 **Q.** You told us that in June of 2010 when
 24 you took over the maintenance and housekeeping
 25 duties, you found this ant poisoning in the shop;

1 correct?
 2 **A. Yes, sir.**
 3 **Q.** Now, I asked you a series of questions
 4 right at the beginning. This is first time anybody
 5 has ever asked you questions like this; correct?
 6 **A. Yes, sir.**
 7 **Q.** Has anyone from Yavapai County Sheriff's
 8 Office went into the shop -- to your knowledge,
 9 went into the shop and looked for those types of
 10 poisons?
 11 **A. No, sir.**
 12 **Q.** Now, right before the break we were
 13 talking about the actual event itself. And on
 14 October 26th during the interview with the
 15 detectives, you told them how many rocks were used
 16 during the ceremony. Do you recall that?
 17 **A. During the whole ceremony?**
 18 **Q.** Yeah. My question is going to be how do
 19 you know how many rocks were used?
 20 **A. Because after the ceremony when we took**
 21 **the lodge down, we counted the rocks as we took**
 22 **them out.**
 23 **Q.** And if you recall, what was the total
 24 number of rocks?
 25 **A. I believe it was 53.**

1 **Q.** And it's those 53 rocks that were used
 2 during the ceremony on -- let me get the date
 3 right -- October 11th, which is a Sunday; correct?
 4 **A. Yes, sir.**
 5 **Q.** And I made a mistake, Ms. Foster.
 6 Perhaps we both did. Not 2011. It was October 11,
 7 2009; correct?
 8 **A. Yes, sir.**
 9 **Q.** Okay. This is Exhibit 49 --
 10 Oh, excuse me, Judge.
 11 My question is, in Exhibit 49 I see the
 12 sheriff line, do not cross.
 13 **A. Yes, sir.**
 14 **Q.** To me that indicates that people are not
 15 allowed to go into the interior of that taped off
 16 area because there is an ongoing investigation.
 17 Correct?
 18 **A. Yes.**
 19 **Q.** Is that what you understand it to be?
 20 **A. Yes, sir.**
 21 **Q.** Okay. And back on October 8, 2009, you
 22 described the emergency medical folks showing up
 23 and the Yavapai County Sheriff's officers; correct?
 24 **A. Yes, sir.**
 25 **Q.** When did they put this tape around? Do

1 you know?
 2 **A. Sometime after all the people were**
 3 **transported.**
 4 **Q.** And did you come back to -- well, you
 5 spent the night with Sarah Mercer; correct?
 6 **A. Yes, sir.**
 7 **Q.** So you were there on October 9th;
 8 correct?
 9 **A. Yes, sir.**
 10 **Q.** Now, was there a time on October 9th that
 11 the crime scene tape was taken down?
 12 **A. I can't say for sure when it was taken**
 13 **down. I know it was down when we did the ceremony**
 14 **Sunday morning.**
 15 **Q.** So at a minimum, we know that between
 16 October 8th, which is a Thursday, and Sunday, which
 17 is October 11, you and the fellow participants in
 18 the ceremony were free to go into that area because
 19 Yavapai County had completed its investigation;
 20 correct?
 21 **A. Yes, sir.**
 22 **Q.** Do you know whether or not this area that
 23 had been cordoned off for the investigation --
 24 whether it was in that condition on Saturday?
 25 **A. Yes, sir.**

1 Q. So you believe this yellow tape was up on
2 Saturday, which would be October 10. And I don't
3 want you guessing. Here's what I'm --
4 A. **I can't say for sure. Like I said,**
5 **sometime before Sunday it was taken down. That's**
6 **all I remember about that.**
7 Q. So could it have been taken down Friday?
8 A. **It could have. Yes.**
9 Q. All right. It could have been taken down
10 Saturday?
11 A. **Yes, sir.**
12 Q. But you know for sure it was not there
13 Sunday?
14 A. **Yes, sir.**
15 Q. And you had come back to Angel Valley on
16 Friday; correct?
17 A. **Yes, sir.**
18 Q. Did anyone from the Yavapai County
19 Sheriff's Office sit down and ask you any questions
20 about what happened on Friday?
21 A. **No.**
22 Q. Did anyone on Saturday -- let me --
23 strike that question.
24 Did you go to Angel Valley on Saturday?
25 A. **Yes, sir.**

1 Q. Did anyone on Saturday from the Yavapai
2 County Sheriff's Office come up to you and ask you
3 what happened?
4 A. **No, sir.**
5 Q. When you spent the night Thursday
6 night -- you're there Friday -- what do you do at
7 Angel Valley on Friday?
8 A. **To be honest, I wandered around**
9 **aimlessly.**
10 Q. When you're wandering around the grounds
11 aimlessly, do you see any Yavapai County Sheriff's
12 detectives taking samples of anything out of the
13 shop?
14 A. **No. I wasn't -- I don't know.**
15 Q. Did you see them talk a look inside the
16 pump house to see whether there was any rat
17 poisoning in there?
18 A. **I did not personally witness them doing**
19 **anything.**
20 Q. So you didn't see them inside the lodge,
21 any of the lodges that you cleaned; correct?
22 A. **No, sir.**
23 Q. You didn't see them inside the Crystal
24 Hall; correct?
25 A. **No, sir.**

1 Q. You were working at the kitchen that
2 day -- in the kitchen at that time, Ms. Foster?
3 A. **Yes, sir.**
4 Q. Did they ever come and take any samples
5 of any of the food that you had prepared throughout
6 this event?
7 A. **Not to my knowledge. No.**
8 Q. And the food was Angel Valley's
9 responsibility; correct?
10 A. **Yes, sir.**
11 Q. The water and fruit that you cut up --
12 that was Angel Valley's responsibility?
13 A. **Yes, sir.**
14 Q. The sweat lodge was put together by Ted
15 Mercer, Angel Valley's responsibility; correct?
16 A. **Yes, sir.**
17 Q. I may have asked this: The water that
18 went in the buckets and the hose was provided by
19 Angel Valley; correct?
20 A. **Yes, sir.**
21 Q. So, stated differently, James Ray
22 International provided some staff members, like
23 Melinda Martin; correct?
24 A. **Yes, sir.**
25 Q. And you understood her to be the event

1 coordinator?
2 A. **Yes, sir.**
3 Q. And the Dream Team; correct?
4 A. **Yes, sir.**
5 Q. And you didn't have any personal
6 conversations with James Ray; correct?
7 A. **No, sir.**
8 Q. Did you have any conversations that you
9 remember with any of those employees or Dream Team
10 members?
11 A. **No, sir. Other than being asked to bring**
12 **this or get that, no.**
13 Q. But you knew in advance of these folks
14 showing up that there was going to be a sweat
15 lodge?
16 A. **Yes, sir.**
17 Q. And did you come to know a person by the
18 name of Mark Rock?
19 A. **Yes, sir.**
20 Q. And Mark Rock was a Dream Team member in
21 October of 2009; correct?
22 A. **Yes, sir.**
23 Q. And you still work at Angel Valley.
24 A. **Yes, sir.**
25 Q. And Mark Rock now lives on the

1 Angel Valley property?
 2 **A. No, sir.**
 3 **Q.** He doesn't rent a house?
 4 **A. No, sir.**
 5 **Q.** Is he right next door?
 6 **A. No, sir.**
 7 **Q.** Did he rent a house at Angel Valley for a
 8 while last year?
 9 **A. They were there for a month.**
 10 **Q.** And -- he and his wife?
 11 **A. Yes, sir.**
 12 **Q.** Is he still somehow affiliated with
 13 Angel Valley?
 14 **A. Not to my knowledge.**
 15 **Q.** So he doesn't go to work there every day?
 16 **A. No.**
 17 **Q.** You're sure of that?
 18 **A. No.**
 19 **Q.** But he did at times throughout 2010 --
 20 well, let me rephrase it.
 21 At times throughout 2010 he was present
 22 at Angel Valley. Fair statement?
 23 **A. For a month, yes.**
 24 **Q.** And you don't recall him renting a
 25 structure to live in?

1 **A. To my knowledge, they were just staying**
 2 **there. They didn't rent.**
 3 **Q.** And you think it was only a month?
 4 **A. It could have been longer.**
 5 **Q.** It could have been, like, closer to a
 6 half a year?
 7 **A. No. I don't think so.**
 8 **Q.** Okay. You know, I'm going to ask --
 9 It is up?
 10 This is a little better picture of the
 11 firewood we were talking about. And I asked you
 12 questions about this wood?
 13 **A. Yes, sir.**
 14 **Q.** And then I'm going to ask you questions
 15 about this wood right here. Let me blow it up. Do
 16 you see this stack?
 17 **A. Yes, sir.**
 18 **Q.** You mentioned that Mr. Mercer, when you
 19 came down from the kitchen, the fire, which was
 20 heating the rocks, had already been started;
 21 correct?
 22 **A. Yes, sir.**
 23 **Q.** All right. You weren't there when he
 24 started the fire?
 25 **A. No, sir.**

1 **MR. KELLY:** And if we could go back out.
 2 **Q.** And then there is a stack of wood over
 3 here to the right. Now, that to me looks more like
 4 natural wood or wood from trees and stuff.
 5 Correct?
 6 **A. Yes, sir.**
 7 **Q.** In the foreground of that firewood is a
 8 little ash fire. Is that where the journals were
 9 burned?
 10 **A. That is where they burned their letters.**
 11 **Yes, sir.**
 12 **Q.** And is this where you were going around
 13 stomping the ashes?
 14 **A. Yes, sir.**
 15 **Q.** And that was to prevent -- prevent a
 16 fire; correct?
 17 **A. Yes, sir.**
 18 **Q.** I want to ask you some questions about --
 19 did you ever go inside -- anytime in 2009 did you
 20 ever go inside the sweat lodge?
 21 **A. The only time I was inside that sweat**
 22 **lodge was when I went in to sweat.**
 23 **Q.** Okay.
 24 **A. And I don't remember whether it was '9 or**
 25 **'8.**

1 **Q.** You know, it was a poor question. I want
 2 to direct your attention to the week surrounding
 3 October 8 of 2009, that week.
 4 **A. Then that answer would be no.**
 5 **Q.** Before the sweat lodge did you go inside?
 6 **A. No, sir.**
 7 **Q.** After?
 8 **A. No, sir.**
 9 **MR. KELLY:** Your Honor, I move to admit 234.
 10 **MS. POLK:** The state has no objection,
 11 Your Honor.
 12 **THE COURT:** 234 is admitted.
 13 (Exhibit 234 admitted.)
 14 **MR. KELLY:** May I publish it, Judge?
 15 **THE COURT:** Yes.
 16 **MR. KELLY:** May I approach the witness?
 17 **THE COURT:** You may.
 18 **Q.** BY MR. KELLY: Let me show you what's
 19 been admitted as Exhibit 234. Tell me who you
 20 recognize in Exhibit 234.
 21 **A. This is Amayra, Sue Ellen. Looks like**
 22 **Jordan here. This is me here, Ester here. Michael**
 23 **is there. This is Ingrid back here.**
 24 **Q.** This was a ceremony which took place on
 25 Sunday, October 11; correct?

1 **A. Yes, sir.**
 2 **Q.** And if -- are you okay?
 3 **A. Yes, sir.**
 4 **Q.** You know, if you need to take a break,
 5 it's fine.
 6 **A. I'm okay.**
 7 **Q.** I know the jury appreciates your
 8 testimony.
 9 **A. Sorry. But I'm okay. Go ahead.**
 10 **Q.** Okay. We take a look and see the wood
 11 structure; correct?
 12 **A. Yes, sir.**
 13 **Q.** And now what's happened in this
 14 photograph is the coverings have been taken off the
 15 lodge; correct?
 16 **A. Yes, sir.**
 17 **Q.** And I can see right in the middle what
 18 appears to be a pit. Is that the pit?
 19 **A. Yes, sir.**
 20 **Q.** And next to it are some rocks; correct?
 21 **A. Yes, sir.**
 22 **Q.** Again, you didn't see the Yavapai County
 23 Sheriff's Office take any of these rocks, did you?
 24 **A. No, sir, I didn't.**
 25 **Q.** Did you see them take anything, like any

1 ash out of the pit?
 2 **A. I did not witness them taking anything.**
 3 **Q.** Okay. All right. And by Sunday you knew
 4 as a participant in this ceremony that it was okay
 5 to tear down that structure and burn it; correct?
 6 **A. Yes, sir.**
 7 **Q.** And I think you told us --
 8 Judge, I believe we have an agreement on
 9 Exhibit 231.
 10 **THE COURT:** Is that correct?
 11 **MS. POLK:** Yes, Your Honor.
 12 **THE COURT:** 231 is admitted.
 13 (Exhibit 231 admitted.)
 14 **MR. KELLY:** May we publish?
 15 **THE COURT:** Yes.
 16 **Q.** BY MR. KELLY: And this is a picture on
 17 the same day; correct?
 18 **A. Yes, sir.**
 19 **Q.** Without all the people around; correct?
 20 **A. Yes, sir.**
 21 **Q.** And you can see the pit that I asked you
 22 about; correct?
 23 **A. Yes, sir.**
 24 **Q.** And the rocks; correct?
 25 **A. Yes, sir.**

1 **Q.** Now, is this where you counted the rocks
 2 to find out how many?
 3 **A. Yes, sir.**
 4 **Q.** And in the back are a bunch of materials.
 5 Are those the coverings?
 6 **A. Yes, sir. Part of them. Yeah.**
 7 **Q.** And when you say "part of them," that
 8 implies to me that they're not all there.
 9 **A. Well, Michael and Jordan were collecting**
 10 **all the tarps and stuff to get rid of them. Those**
 11 **just hadn't been put in the van yet.**
 12 **Q.** So they were not burned?
 13 **A. No, sir.**
 14 **Q.** Only the --
 15 **A. Only the natural stuff was burned.**
 16 **Q.** And when you say "Michael and Jordan,"
 17 they were collecting all this information to put in
 18 the van and take it somewhere else; correct?
 19 **A. Yes, sir.**
 20 **Q.** And it did not go to the Yavapai County
 21 Sheriff's Office; correct?
 22 **A. No, sir.**
 23 **Q.** Some of this is plastic; correct?
 24 **A. Yes, sir.**
 25 **Q.** And then other materials are more like a

1 blanket material?
 2 **A. Yes, sir.**
 3 **MR. KELLY:** And, Judge, I believe we have an
 4 agreement as to exhibits 235 and 237.
 5 **THE COURT:** 235 and 237 are admitted.
 6 (Exhibits 235 and 237 admitted.)
 7 **MR. KELLY:** Perhaps we can publish 235.
 8 May I approach the witness?
 9 **THE COURT:** Yes.
 10 **Q.** BY MR. KELLY: Again, the photograph is a
 11 little easier to see than the overhead. This is
 12 the actual exhibit. Take a look at 235. Do you
 13 see those blue things?
 14 **A. Yes, sir.**
 15 **Q.** Those are tobacco pouches --
 16 **A. They're prayer ties.**
 17 **Q.** -- worn by the participants; correct?
 18 **A. Sorry.**
 19 **Q.** Those are tobacco pouches which were worn
 20 by the participants, if you know?
 21 **A. I don't know who they were worn by.**
 22 **Q.** Well, they are tobacco pouches that were
 23 located inside the sweat lodge?
 24 **A. Yes.**
 25 **Q.** Fair statement?

1 **A. Yes, sir.**
 2 **Q.** And, again, the Yavapai County Sheriff's
 3 Office didn't collect these; correct?
 4 **A. I don't know whether they did or not.**
 5 **Q.** Well, let's take a look at --
 6 **A. They didn't collect all of them**
 7 **obviously.**
 8 **Q.** Yeah. Let's take a look at 237. These
 9 are burned up; correct?
 10 **A. Yes, sir.**
 11 **Q.** And, again, this was part of this
 12 ceremony that you described; correct?
 13 **A. Yes, sir.**
 14 **Q.** Now, about a year later there is a
 15 memorial service at the same site; correct?
 16 **A. Yes.**
 17 **Q.** Did you attend that?
 18 **A. Yes, sir, I did.**
 19 **Q.** Were you aware that Michael and Amayra
 20 Hamilton invited the plaintiffs in the lawsuit that
 21 had sued them to that ceremony?
 22 **A. Yes, sir.**
 23 **Q.** Were you aware that the condition of
 24 attending that ceremony was that they drop their
 25 lawsuit?

1 **A. No, sir.**
 2 MS. POLK: Your Honor, objection. Assumes
 3 facts not in evidence.
 4 THE COURT: All right. Sustained as to the
 5 form of the question.
 6 **Q.** BY MR. KELLY: You were aware that
 7 Michael and Amayra had invited the plaintiffs in
 8 the lawsuit that had sued them; correct?
 9 **A. I was aware that they had invited all of**
 10 **the participants.**
 11 **Q.** Including the 10 that sued; correct?
 12 **A. Including the 10. Yes, sir.**
 13 **Q.** And my question is, were you aware that
 14 inviting the plaintiffs who had sued them was an
 15 effort for them to drop their lawsuit?
 16 **A. No, sir. I was not.**
 17 **Q.** Now, you attended that ceremony; correct?
 18 **A. Yes, sir.**
 19 **Q.** And it was at the same spot; correct?
 20 **A. Yes, sir.**
 21 MR. KELLY: If we could publish 144.
 22 And may I approach?
 23 THE COURT: Yes.
 24 **Q.** BY MR. KELLY: Ms. Foster, again,
 25 sometimes a photograph is a lot easier to see. You

1 told us that a lady in a white bathing suit was --
 2 had left the sweat lodge. And then two of the
 3 Dream Team members were trying to get her to go
 4 back in.
 5 Do you recall that testimony?
 6 **A. Yes, sir.**
 7 **Q.** Okay. My question is can you point her
 8 out in the line up here in 144?
 9 **A. This lady right here. That's the wrong**
 10 **one. I'm trying to get to her. That lady right**
 11 **there.**
 12 **Q.** This one?
 13 **A. Behind that lady.**
 14 **Q.** This one?
 15 **A. The blond-headed lady right behind her.**
 16 **Yeah. Right there.**
 17 **Q.** You believe that's her?
 18 **A. Yes, sir.**
 19 **Q.** So see my laser pointer?
 20 **A. Yes, sir.**
 21 **Q.** This lady? Or is that a guess?
 22 **A. I don't recall her having blond hair. I**
 23 **thought she had brown hair.**
 24 **Q.** And, of course, it's been a year and a
 25 half; correct?

1 **A. And you see a lot of these women. They**
 2 **have their pants and stuff on. They pulled them**
 3 **off as they went in.**
 4 **Q.** Yeah. But my question is --
 5 **A. So, no. I can't tell for sure who it is.**
 6 **Q.** Okay.
 7 **A. But she had brown hair, not blond.**
 8 **Q.** And my question is, of course, it's been
 9 a year and a half; correct?
 10 **A. Yes, sir.**
 11 **Q.** So you're doing the best you can, but you
 12 may not remember everything; correct?
 13 **A. Yes, sir.**
 14 **Q.** Now, you told us that when this lady --
 15 well, let me back up.
 16 When you come down and the sweat lodge
 17 starts, the first round -- and we went through the
 18 18 rock thing. Remember that? And you were
 19 sitting on this log; correct?
 20 **A. Yes, sir.**
 21 **Q.** And do you recall telling the detectives
 22 that in the first round three people came out?
 23 **A. Yes, sir.**
 24 **Q.** And you said they collapsed; correct?
 25 **A. Yes, sir.**

- 1 Q. Now, then you told the detectives that
2 actually what happened is the Dream Team was trying
3 to keep them down so they didn't stand up too
4 quick; correct?
5 A. Yes, sir.
6 Q. And that's because the blood would rush
7 to their head and they're hot. So it was a safety
8 measure; correct?
9 A. Yes, sir.
10 Q. And those three folks came out. And I
11 believe you told us you got them some fruit and
12 water. Correct?
13 A. Yes, sir.
14 Q. And they came out and laid on one of
15 these two tarps?
16 A. Yes, sir.
17 Q. One of them sat in a chair over here on
18 the left side; correct?
19 A. One of the ladies.
20 Q. Then you went back and sat down on your
21 log; correct?
22 A. Yes, sir.
23 Q. And when people would leave, they were
24 free to leave; correct?
25 A. Yes, sir.

- 1 Q. But they were encouraged to go back in?
2 A. Yes, sir. They were.
3 Q. And I don't want to go through this too
4 many times. I want to exclude the two Dream Team
5 members you talked about. Talking about everybody
6 else, no one else forced them to go back in;
7 correct?
8 A. No, sir.
9 Q. And these people that were encouraging to
10 go back in were Dream Team members; correct?
11 A. Yes, sir.
12 Q. And the people who were inside the sweat
13 lodge; correct?
14 A. Yes, sir.
15 Q. And Mr. Ray?
16 A. Yes, sir.
17 Q. So everybody; correct?
18 A. Yes, sir.
19 Q. And did you ever meet a lady by the name
20 of Melissa Phillips?
21 A. The name is familiar.
22 Q. Let me phrase it this way: Did you see
23 someone leave at the third round, get cooled off,
24 and go back in for the remainder of the sweat
25 lodge?

- 1 A. Can you repeat that for me?
2 Q. Okay. Let's forget the name for a
3 minute.
4 A. Yeah.
5 Q. Okay. Did you see a lady come out on the
6 third round, get cooled off -- you know -- wait
7 outside for a round, and then go back in for the
8 remaining portion of the sweat lodge?
9 A. Somebody went back in, but I didn't know
10 her name.
11 Q. And, again, nobody forced her to go back
12 in; correct?
13 A. No, sir.
14 Q. You told the detectives that when the
15 flap is down, you can't really hear what's going on
16 inside the sweat lodge; correct?
17 A. Very little.
18 Q. I take it, Ms. Foster, that when these --
19 folks came out every round; correct?
20 A. Not every round. No.
21 Q. Pretty much every round?
22 A. Pretty much.
23 Q. And they didn't all stay there; correct?
24 A. No, sir.
25 Q. Some of them went back to their rooms or

- 1 their tents; correct?
2 A. Yes, sir.
3 Q. You know, I have to ask you something
4 about the tents. You had an exhibit up here of
5 Angel Valley. And you said this year you set up
6 all the tents and the tepee; correct?
7 A. Yes, sir.
8 Q. And there were beds inside of there;
9 correct?
10 A. Yes, sir.
11 Q. And there is dirt floors in those --
12 A. No, sir. They're carpeted.
13 Q. Well, what are they made of?
14 A. They're 10 by 10 canopy tents. And I put
15 two twin-size beds -- two twin-size mattresses,
16 comforters, blankets, pillows --
17 Q. No. But I mean --
18 A. -- two nightstands, lights, and a carpet
19 floor.
20 Q. No wood. Just carpet?
21 A. No. It's got a regular canvass tent
22 floor with a carpet laid in it.
23 Q. Okay. And you showed us the location. A
24 lot of those are next to Oak Creek; correct?
25 A. Yes, sir.

- 1 Q. And we talked about all the animals and
2 bugs; correct?
3 A. **Yes, sir.**
4 Q. And there is not some special power that
5 keeps those insects out of those tents; correct?
6 A. **No, sir.**
7 Q. Yeah. Okay. So these people, when they
8 came out, some of them would get up and leave and
9 go back to either their house or their little cabin
10 or their tent; correct?
11 A. **I only saw one person leave. One lady**
12 **went back to her cabin.**
13 Q. Out of the entire --
14 A. **That's all I saw leave.**
15 Q. Do you believe --
16 A. **They walked away and left.**
17 Q. Let me try to clarify that. Do you
18 believe some people may have left that you didn't
19 see?
20 A. **They could have.**
21 Q. Now, at some point in time, I believe
22 it's around 4:00 or so, you know that somebody got
23 hurt because they fell into the fire --
24 A. **Yes.**
25 Q. -- or into the hot rocks; correct?

- 1 A. **Yes, sir.**
2 Q. And you learned later that was Lou Caci;
3 correct?
4 A. **Yes, sir.**
5 Q. Now, when Lou fell into the hot rocks,
6 you didn't hear him scream; right?
7 A. **No, sir.**
8 Q. And when he came out, you told the
9 detective that you could feel a lot of heat coming
10 from his arm. Do you recall that?
11 A. **Yes, sir.**
12 Q. Now, you're not a nurse.
13 A. **No, sir.**
14 Q. But you're using common sense. And you
15 thought the first thing you should do is cool that
16 arm down; correct?
17 A. **Yes, sir.**
18 Q. Someone had taken a towel and wrapped
19 around it?
20 A. **Tried to. Yeah.**
21 Q. All right. And you stopped her from
22 doing that?
23 A. **Yes, sir.**
24 Q. And then you went up to the kitchen, I
25 guess --

- 1 A. **Yes, sir.**
2 Q. -- and got some water and put it in a
3 bucket; correct?
4 A. **I got a clean bucket that hadn't been**
5 **used.**
6 Q. Was that one of these white buckets?
7 A. **No, sir. That was a brand new bucket**
8 **from Home Depot. An orange bucket.**
9 Q. Similar to these?
10 A. **Yes, sir.**
11 Q. And you came back with the water. And
12 then you went back and got the ice.
13 A. **Yes, sir.**
14 Q. So you told the detectives that it was
15 about two and a half minutes each way?
16 A. **It was about 10 minutes round trip.**
17 Q. For a total of two round trips, 10
18 minutes; correct?
19 A. **Yes, sir.**
20 Q. And what was Lou doing while you were
21 gone?
22 A. **He was sitting on the tarp.**
23 Q. That was a very poor question. Because
24 you don't know what he was doing while you're gone.
25 Let me ask it this way.

- 1 A. **Oh. Well, that's true. He was sitting**
2 **on the tarp. But what he was doing I don't know.**
3 Q. When you left him the first time, what
4 was he doing?
5 A. **When I left him the first time, he was**
6 **sitting on the tarp.**
7 Q. And when you came back the first time,
8 what was he doing?
9 A. **He was still sitting in the same spot.**
10 Q. And then you go back and you come back
11 again. What's he doing?
12 A. **He's still sitting in the same spot with**
13 **his arm in the bucket.**
14 Q. Okay. Was anybody else trying to help
15 him?
16 A. **This was somebody on the other side of**
17 **him talking to him.**
18 Q. I mean, trying to help him -- doing
19 something to help him?
20 A. **Not to my knowledge. No.**
21 Q. I think you told us it was the nurse that
22 said wrap the towel; correct?
23 A. **She said she was a nurse.**
24 Q. And I take it that Melinda Martin did not
25 go help you get the water. Correct?

- 1 **A. No, sir.**
 2 **Q.** You did this on your own?
 3 **A. Yes, sir.**
 4 **Q.** So Melinda Martin didn't help Lou Caci at
 5 all --
 6 **A. Not to my knowledge.**
 7 **Q.** -- to your knowledge; correct?
 8 Melinda Martin was not the one that got
 9 the water; correct?
 10 **A. No, sir.**
 11 **Q.** She was not the one that got the ice;
 12 correct?
 13 **A. No, sir.**
 14 **Q.** You were?
 15 **A. Yes, sir.**
 16 **Q.** When you saw Lou Caci and you were
 17 treating him, you got pretty close to him; correct?
 18 **A. Yes, sir.**
 19 **Q.** And did you see a laceration across the
 20 palm of his hand?
 21 **A. He had something going on. But I was**
 22 **worried about his arm and his toes.**
 23 **Q.** His toes?
 24 **A. Yeah.**
 25 **Q.** What was wrong with his toes?

- 1 **A. He had some scrapes and burns on his toes**
 2 **too or something going on with his toes. I forget**
 3 **now. He said he had blood on his foot.**
 4 **Q.** Did you see any abrasions or cuts or
 5 lacerations on his knees?
 6 **A. I don't remember.**
 7 **Q.** When you're gone for 10 minutes, I
 8 imagine that you may have missed a portion of what
 9 was going on; correct?
 10 **A. Yes, sir.**
 11 **Q.** But my question is did you see -- did you
 12 meet a fellow by the name of Mike Olesen?
 13 **A. Michael.**
 14 **Q.** Well, did you see a person leave the
 15 sweat lodge around the fifth round and go back in
 16 on the last round?
 17 **A. Yes, sir.**
 18 **Q.** So is that two people, then, that went
 19 back in?
 20 **A. Yes, sir.**
 21 **Q.** When Lou Caci -- your only conversation
 22 with Mr. Caci was asking him whether or not he was
 23 okay; correct?
 24 **A. Yes, sir.**
 25 **Q.** And you didn't hear anyone else involved

- 1 in this situation encourage him or ask him to go
 2 back in; correct?
 3 **A. No, sir.**
 4 **Q.** Now, you told us about a fellow coming
 5 out and laying down and saying, I'm going to die?
 6 I'm going to die? Something to that effect?
 7 **A. Yes, sir.**
 8 **Q.** And you heard Mr. Ray -- and you're back
 9 on your log; correct?
 10 **A. Yes, sir.**
 11 **Q.** And I take it other than treating
 12 Mr. Caci, you would sit on this log; correct?
 13 **A. Yes, sir.**
 14 **Q.** And while sitting on that log, you heard
 15 Mr. Ray say something to the effect of calm down?
 16 **A. Yes, sir.**
 17 **Q.** And when he said that, this fellow
 18 Dennis -- or this individual calmed down; correct?
 19 **A. No, sir.**
 20 **Q.** No? He just kept screaming?
 21 **A. Not at all.**
 22 **Q.** Pardon me?
 23 **A. Not at all.**
 24 **Q.** So you remember him just screaming?
 25 **A. Well, he -- yeah. Help me. I'm dying.**

- 1 **Q.** Okay. And somebody was helping him, I
 2 presume. Correct?
 3 **A. Some lady that said she was a doctor.**
 4 **Q.** And that's one of those Dream Team
 5 members; correct?
 6 **A. Yes.**
 7 **Q.** It wasn't a doctor from inside the tent;
 8 correct?
 9 **A. I don't know if there was a doctor in the**
 10 **tent or not.**
 11 **Q.** No. I'm trying to clarify that it was
 12 not anyone inside the tent that may have been a
 13 doctor.
 14 **A. No, sir.**
 15 **Q.** And you told the detectives that you
 16 didn't see people being drug out. What they were
 17 actually doing was kind of crawling out; correct?
 18 **A. Yes, sir.**
 19 **Q.** Now, I've put up Exhibit 414. And I
 20 asked you whether you had any reason to dispute
 21 that the diameter of the sweat lodge is 23 feet.
 22 Do you recall that question?
 23 **A. Yeah. I recall it. Yeah.**
 24 **Q.** Yeah. And you were there and saw the
 25 sweat lodge. So it looked to be about 23 feet. Is

1 that a fair statement?

2 **A. Yes, sir.**

3 **Q.** And then we talked about you being about
4 30 feet -- 28 to 30 feet away from the entrance to
5 the sweat lodge. Do you recall that?

6 **A. Yes, sir.**

7 **Q.** So if my math is correct, 30 plus 23
8 would be 53 feet; correct?

9 **A. Yes, sir.**

10 **Q.** And I don't think that 53 feet would take
11 me outside the courtroom. But what I want to ask
12 you is when you're sitting on your log, it's your
13 recollection that somebody within the lodge, and
14 you don't know who, said, there's three people down
15 back here.

16 Do you recall that?

17 **A. Yes, sir.**

18 **Q.** And so that would be when you're sitting
19 down and the flap is down in the lodge, you could
20 hear somebody say, there's three people down back
21 here; correct?

22 **A. Yes, sir.**

23 **Q.** And you told the detective that someone,
24 and you didn't know who, said, are they breathing?
25 And you don't know who that person was; correct?

1 **A. No, sir.**

2 **Q.** Then you believe you heard James Ray say
3 something to the effect, leave them? We have one
4 more round to do?

5 **A. Yes, sir.**

6 **Q.** And, again, Ms. Foster, you didn't
7 mention that to Detective Barbaro on October 8,
8 2009; correct?

9 **A. I don't remember whether I mentioned it
10 to her or not.**

11 **Q.** Okay. If --

12 **A. If you say I didn't, then without having
13 what I said then right in front of my face, I don't
14 know what I said to him.**

15 MR. KELLY: Your Honor, if I may approach?

16 THE COURT: You may.

17 **Q.** BY MR. KELLY: If this refreshes your
18 recollection, it's his police report. It's not
19 admitted into evidence.

20 MS. POLK: Your Honor, if counsel will
21 stipulate that it's a police report and not a
22 transcript of what she said.

23 MR. KELLY: It is a police report, Judge.
24 That's what I said. It's not a transcript.

25 THE COURT: Okay.

1 That's correct, then, Ms. Polk.

2 THE WITNESS: Okay. I did not say that to
3 him.

4 **Q.** BY MR. KELLY: Well, your testimony is
5 you don't remember saying that; correct?

6 **A. Right.**

7 **Q.** And I just provided you a police report.
8 And the police report doesn't say that; correct?

9 **A. Yes, sir.**

10 **Q.** But that would be something that's
11 important; correct?

12 **A. Yes, sir. Very important.**

13 **Q.** Yeah.

14 **A. And, again, I was in severe shock in that
15 moment.**

16 **Q.** And between --

17 May I approach, Judge?

18 THE COURT: Yes.

19 **Q.** BY MR. KELLY: Between October 8th and
20 October 26th, you had the opportunity to listen to
21 Beverly Bunn's interview on the TV; correct?

22 **A. I caught about two seconds of it at the
23 very end of it and turned the channel.**

24 **Q.** During that time you were working for
25 Angel Valley; correct?

1 **A. Yes, sir.**

2 **Q.** During that time you had contact with Ted
3 and Debbie Mercer; correct?

4 **A. Yes, sir.**

5 **Q.** During that time you had contact with
6 Michael and Amayra Hamilton; correct?

7 **A. Yes, sir.**

8 **Q.** And when you give your interview on
9 October 26th and make this statement, you have the
10 Hamiltons' attorney present with you; correct?

11 **A. Yes, sir.**

12 **Q.** Now, you told us that -- on direct that
13 when they came out at the end of the ceremony, when
14 they came out, they were dropping like flies?

15 **A. Yes, sir.**

16 **Q.** That was your words; correct?

17 **A. Yes, sir.**

18 **Q.** Was anyone okay?

19 **A. James Ray was okay.**

20 **Q.** So I take it that your recollection is
21 that --

22 Perhaps we can put up --

23 When they come out -- all right. Let me
24 ask you this question: Before they come out,
25 you're still sitting on the log; correct?

1 **A. Yes, sir.**
 2 **Q.** When they come out and you say they're
 3 dropping like flies, that's your description?
 4 **A. Yes, sir.**
 5 **Q.** You go to help?
 6 **A. Yes, sir.**
 7 **Q.** There were four or five, six people on
 8 the outside of the lodge that helped; correct?
 9 **A. Yes, sir.**
 10 **Q.** That would include Ted and Debbie and
 11 Sarah; correct?
 12 **A. Yes, sir.**
 13 **Q.** And then the five Dream Team members we
 14 saw?
 15 **A. Amayra and Sue Ellen and -- and -- yeah.**
 16 **And a couple of the Dream Team members that were**
 17 **inside came out. And they were okay. I mean, they**
 18 **were --**
 19 **Q.** Now I'm confused. I thought you said
 20 James was the only guy that was okay.
 21 **A. I didn't say he was the only guy. I said**
 22 **James was okay.**
 23 **Q.** Okay. That's what I'm trying to
 24 determine. A minute ago I thought you said James
 25 Ray was the only one --

1 **A. No, sir. A couple of the Dream Team**
 2 **members appeared to be okay too.**
 3 **Q.** So James and a couple of Dream Team
 4 members were okay when they came out; correct?
 5 **A. Yes, sir.**
 6 **Q.** Was Mark Rock okay when he came out?
 7 **A. To my knowledge, yes.**
 8 **Q.** Was the Dream Team member Liz Neuman okay
 9 when she came out?
 10 **A. I did not see her when she came out.**
 11 **Q.** Did you know a fellow by the name of Josh
 12 Fredrickson? Was he okay?
 13 **A. I don't know his name.**
 14 **Q.** Did you see any of the participants,
 15 other than the Dream Team members and Mr. Ray, that
 16 came out that were okay?
 17 **A. No, sir. I did not.**
 18 **Q.** So did you see a lady come out --
 19 Dr. Jeanne Armstrong -- with her arms up in the
 20 Rocky pose?
 21 **A. No, sir.**
 22 **Q.** Did you see Melissa Phillips come out?
 23 **A. No, sir.**
 24 **Q.** Did you see Laura --
 25 **A. I don't know these people's names. So**

1 **you're asking me about -- I don't know any of their**
 2 **names.**
 3 **Q.** Okay. If you don't know, that's fine.
 4 Just answer what you know.
 5 **A. Okay.**
 6 **Q.** Did you see Laura Tucker come out?
 7 **A. No.**
 8 **Q.** Did you see Mike Olesen come out?
 9 **A. I'm going to say no because I don't know**
 10 **their names.**
 11 **Q.** Okay. Did you see Danita Olesen come
 12 out --
 13 **A. No.**
 14 **Q.** -- and she was okay?
 15 **A. No.**
 16 **Q.** Did you see Dr. Nell Wagoner come out,
 17 and she was okay?
 18 **A. No.**
 19 **Q.** There was one person you did know.
 20 That's Beverly Bunn. Did you see her come out, and
 21 she was okay?
 22 **A. No. She was not okay.**
 23 **Q.** That is --
 24 **A. I didn't know who she was at the time**
 25 **either.**

1 **Q.** No. But you were later able to identify
 2 her; correct?
 3 **A. Yes, sir.**
 4 **Q.** And so my question is, did you see
 5 several women and several men come out, other than
 6 James Ray and the Dream Team members, who were
 7 apparently okay?
 8 **A. No, I did not.**
 9 **Q.** Now, you told us once they got out, James
 10 came out and said something like, hose me down;
 11 correct?
 12 **A. Yes, sir.**
 13 **Q.** And he went to the foreground of this
 14 exhibit and made some comment to one person on the
 15 ground; correct?
 16 **A. Yes, sir.**
 17 **Q.** And he said something like, you did it;
 18 correct?
 19 **A. Yes, sir.**
 20 **Q.** At that point in time you told us this
 21 morning that you remember Debbie going to the back
 22 of the tent; correct --
 23 **A. Yes, sir.**
 24 **Q.** -- because two people were down?
 25 **A. Yes, sir.**

1 Q. And almost simultaneously she was going
2 to lift up the back of the tent, and James Ray said
3 it's sacrilegious.
4 A. Yes, sir.
5 Q. And then he said do it anyway; correct?
6 A. Yes, sir.
7 Q. That happens kind of in passing, I take
8 it? Correct?
9 A. Yes, sir.
10 Q. And it's two people; correct?
11 A. Yes, sir.
12 Q. And you didn't help them?
13 A. No, sir. I was working with people up
14 front. Now, you have to understand, there were
15 people laying everywhere.
16 Q. Are you okay?
17 A. Yes, sir. I'm okay.
18 Q. It's been a year and a half since this
19 happened; correct?
20 A. Yes, sir.
21 Q. And you seem to be pretty upset. Is that
22 affecting your ability to remember what happened?
23 A. No, sir.
24 Q. Well, here's why I ask that question --
25 is because you told Detective Diskin that there

1 were three people, not two people, down behind the
2 tent. Do you recall that?
3 MS. POLK: Your Honor, can I have a page
4 reference?
5 THE COURT: Yes.
6 MR. KELLY: Page 13 of Exhibit 637, line 26.
7 Q. Did you understand my question?
8 A. I could see two people that had been
9 pulled out. I never saw Liz Neuman. I couldn't
10 see her from where I was at.
11 Q. Well, you told the detective there were
12 Kirby and James Shore. I don't know the name of
13 the other lady. Do you recall that?
14 A. Uh-huh. Yes, sir.
15 Q. Then in response by Detective Polling
16 when he asked, how do you know who those people
17 are, you replied, because I was standing there. Do
18 you recall that?
19 A. Yes.
20 Q. These people were pulled out of the back;
21 correct?
22 A. Yes, sir.
23 Q. And you're in the front; correct?
24 A. No, sir. I was not in the front. I was
25 over where this lady is right here. Right here.

1 See her? That's where I was at with the lady that
2 was laying on the ground.
3 Q. Then he asked you, how do you know it was
4 James? And your reply was, because my boss told me
5 it was James; correct?
6 A. Well, yeah. I found their names out
7 afterwards.
8 Q. You weren't in shock on October 26th when
9 you gave this statement; correct?
10 A. No, sir.
11 Q. And your testimony today is that it was
12 two people, not three people; correct?
13 A. Yes, sir.
14 Q. And it's your testimony today that James
15 Ray never went around behind the lodge to assist
16 the two people that were down; correct?
17 A. No. My testimony was is I never
18 witnessed him go behind the lodge.
19 Q. On October 27 do you recall being
20 asked -- excuse me, October 26th, 2009. This is
21 page 16 -- that if someone testified that they were
22 back here near these two people and they asked
23 James Ray for help, that they'd be a bald-faced
24 liar; right?
25 A. Yes. I did say that. I was very angry.

1 Q. If Dr. Jeanne Armstrong took this witness
2 stand and testified that she asked James Ray to go
3 get an AED and help assist the treatment of these
4 people, she would be a bald-faced liar; correct?
5 MS. POLK: Your Honor, objection. This is an
6 improper question.
7 THE COURT: Overruled.
8 You may answer that.
9 Q. BY MR. KELLY: Correct?
10 A. At this moment, no. She wouldn't.
11 Q. So this isn't true; correct?
12 A. I was angry when I said that. Yes.
13 Q. Okay. And that's what I'm trying to get
14 at, ma'am, is I'm trying to separate the emotion
15 from the fact because that's my job.
16 Okay?
17 A. Yes.
18 Q. And you're emotional today; correct?
19 MS. POLK: Excuse me, Your Honor.
20 THE WITNESS: Say that again.
21 THE COURT: There is an objection.
22 Ms. Polk --
23 MR. KELLY: I'll rephrase my question.
24 MS. POLK: Mr. Kelly, excuse me. Pursuant to
25 Rule 106 --

1 THE COURT: One second, please.
 2 Ms. Polk.
 3 MS. POLK: Pursuant to 106, I would ask that
 4 Mr. Kelly read the remainder. He read line 8.
 5 That he read lines 9 through 16 or allow the
 6 witness to see it.
 7 THE COURT: I didn't hear the rest.
 8 MS. POLK: Or allow the witness to see the
 9 transcript.
 10 MR. KELLY: Judge, may I approach the witness?
 11 THE COURT: Mr. Kelly, if that's what you wish
 12 to do, you may do that.
 13 MR. KELLY: I wasn't going to, but I don't
 14 have any objection.
 15 Q. Ma'am, I'm going to hand you Exhibit 637,
 16 marked for identification.
 17 A. **Well, before I read that, let me also**
 18 **state --**
 19 Q. Well, there is no question, so you can't
 20 do that. Okay?
 21 A. **Okay.**
 22 Q. But I am going to ask you this question.
 23 Are you okay?
 24 A. **Yes, sir.**
 25 Q. And you said you were emotional. You

1 were angry when you made that statement; correct?
 2 A. **Yes.**
 3 Q. And you look pretty emotional today.
 4 A. **Yes. But further down in this, the next**
 5 **question was asked.**
 6 Q. Now, wait a minute. Let me ask the
 7 question. Okay?
 8 Take a look at page 16, first line -- no.
 9 I want you to go back to page 15, line 28. Can you
 10 do that? Do you recall the question:
 11 Detective Diskin: He never -- so you're watching.
 12 He never went over there?
 13 Do you recall that question?
 14 A. **What line am I looking at?**
 15 Q. Final line, line 28. Detective Diskin --
 16 A. **Oh. Okay.**
 17 Q. -- asked you a question. He says, he
 18 never -- he's James Ray. So you're watching --
 19 you're watching these two -- four people. He never
 20 went over there?
 21 That was the question.
 22 Now, if you would please read to the jury
 23 your response, line one, page 16?
 24 A. **He never walked over there to look at**
 25 **these people.**

1 Q. Now, my question was that if
 2 Detective Jeanne Armstrong said he did, would that
 3 contradict what you told the detectives on
 4 October 26th?
 5 A. **Yes, sir.**
 6 Q. Now, Ms. Polk asked me to continue, so
 7 I'm going to do it. Diskin says, well, what if
 8 somebody -- and I just want to make sure you're
 9 there the whole time in this area. Right?
 10 What's your response? Please read it.
 11 A. **Uh-huh.**
 12 Q. Then the detective says, what if somebody
 13 told us that James Ray went over to these people,
 14 said, hey, what do you guys need? Can I get you
 15 something? What do you need? If somebody told me
 16 that, would they be telling the truth?
 17 What was your response?
 18 A. **I'd call them a bald-faced liar.**
 19 Q. And then Diskin says, okay. So you're
 20 sure that that conversation couldn't have gone on
 21 or that this couldn't have happened?
 22 What was your response?
 23 A. **In my mind, I never saw anything like**
 24 **that. I saw James Ray walk over to the end of the**
 25 **tarps. Those people were there. Those people that**

1 **were there were blue and were way on the other**
 2 **side. And, like I said, I lost track of James Ray**
 3 **after that.**
 4 **And no. I'm not going to say positively**
 5 **that he did not -- that that did not happen because**
 6 **I didn't see it. So, no. I cannot say that he did**
 7 **not -- cannot positively say that he did not walk**
 8 **over there.**
 9 Q. So it's your testimony today that you
 10 don't know what James Ray did after this event;
 11 correct?
 12 A. **No, sir. I do not.**
 13 Q. You can only tell the jury what you
 14 personally observed; right?
 15 A. **Yes, sir.**
 16 Q. If Dr. Jeanne Armstrong said he tried to
 17 help her, you would have no reason to dispute that?
 18 A. **No, I would not.**
 19 Q. If Melinda Martin said that he was back
 20 here in the proximity of these two people, you
 21 would have no reason to dispute that; correct?
 22 A. **No, sir, I would not.**
 23 Q. You know what's interesting -- if you
 24 want to take a look at your transcript on page 20
 25 to refresh your recollection, that's the final

1 page. The last thing the detective says on
 2 October 26th, if he needs additional information,
 3 he'll give you a call; correct?
 4 **A. Yes, sir.**
 5 **Q.** And you've been here since then; correct?
 6 **A. Yes, sir.**
 7 **Q.** And right out there at Angel Valley where
 8 you were on that date; correct?
 9 **A. Yes, sir.**
 10 **Q.** No one ever called you; correct?
 11 **A. No, sir.**
 12 **Q.** When you talked about the first emergency
 13 vehicle, I believe it was a fire truck you believe
 14 showed up. Correct?
 15 **A. Yes, sir.**
 16 **Q.** And then there are some helicopters;
 17 correct?
 18 **A. Yes, sir.**
 19 **Q.** And quite a few police officers; correct?
 20 **A. Yes, sir.**
 21 **Q.** Can you give us any idea as to the number
 22 of police officers.
 23 **A. You said how many?**
 24 **Q.** Yeah. Do you have any idea?
 25 **A. No, I don't.**

1 **Q.** I mean, is it, like, 4 or 40?
 2 **A. It was, like, four or five or six cars**
 3 **there.**
 4 **Q.** Well, did you see the Yavapai County
 5 Sheriff's Office command unit, which is a motor
 6 home?
 7 **A. Big white van.**
 8 **Q.** Would you agree with me that there were
 9 quite a few police officers or sheriff's deputies
 10 present; correct?
 11 **A. Yes, sir.**
 12 **Q.** And you were there the whole time? You
 13 never left; correct?
 14 **A. No, sir.**
 15 **Q.** And other than that brief interview with
 16 Detective Barbaro, they never spoke with you;
 17 correct?
 18 **A. Yes, sir.**
 19 **Q.** And they never spoke with you during the
 20 past 18 months; correct?
 21 **A. No, sir.**
 22 **Q.** And the first time anyone ever asked you
 23 questions about insecticides, herbicides, rat
 24 poisoning, firewood, tarps, was today; correct?
 25 **A. Yes, sir.**

1 **Q.** Thank you, Ms. Foster.
 2 THE COURT: Thank you, Counsel.
 3 Redirect, Ms. Polk?
 4 MS. POLK: Yes, Your Honor. Just briefly.
 5 REDIRECT EXAMINATION
 6 BY MS. POLK:
 7 **Q.** Ms. Foster, just a few questions for you.
 8 That last question that Mr. Kelly asked you about
 9 October 8th and getting more than just a brief
 10 statement from you. Did it look like the
 11 detectives were taking statements from everybody
 12 that night?
 13 **A. Yes, sir. I mean yes, ma'am.**
 14 **Q.** And was the focus on statements or saving
 15 lives?
 16 MR. KELLY: Your Honor, objection.
 17 THE WITNESS: Savings lives.
 18 MR. KELLY: I object.
 19 THE COURT: Sustained.
 20 **Q.** BY MS. POLK: You told the jury that the
 21 first statement taken from you was with an officer,
 22 and you were sitting in a golf cart. Do you recall
 23 that?
 24 **A. Yes, ma'am.**
 25 **Q.** And about what time was that?

1 **A. Around 11:30 at night.**
 2 **Q.** How many minutes did you speak to the
 3 officer?
 4 **A. I haven't got an idea. I don't know.**
 5 **Q.** It was a quick --
 6 **A. Not very long.**
 7 **Q.** It was a quick little interview?
 8 **A. Yes, ma'am. He just asked me questions,**
 9 **and I answered him.**
 10 **Q.** Did you answer every question that he
 11 asked?
 12 **A. Yes, ma'am.**
 13 **Q.** And at that time did that officer ask you
 14 questions about insecticides and pesticides and
 15 wood and some of the other questions that Mr. Kelly
 16 asked you?
 17 **A. No, ma'am.**
 18 **Q.** Do you know, Ms. Foster, if that
 19 interview was being recorded?
 20 **A. I don't know.**
 21 **Q.** And what Mr. Kelly showed you was not a
 22 transcript of that interview. Would you agree with
 23 that?
 24 **A. Yes, ma'am.**
 25 **Q.** It was just a --

1 MR. KELLY: Your Honor, I stipulated it was a
2 police report.
3 THE COURT: Overruled.
4 You can ask the question, Ms. Polk.
5 Q. BY MS. POLK: And do you recall how many
6 paragraphs summarizing your conversation with the
7 officer were in that report that Mr. Kelly showed
8 you?
9 A. **Looked like maybe four.**
10 Q. The interview that was conducted with
11 you, then, on October 26th -- was that more
12 extensive?
13 A. **Yes, ma'am.**
14 Q. Do you still have that transcript in
15 front of you?
16 A. **Yes, ma'am.**
17 Q. Is it Exhibit 637?
18 A. **Yes, ma'am.**
19 Q. And did you cooperate fully in that
20 interview?
21 A. **Yes, ma'am.**
22 Q. Let me ask you, first of all, the man who
23 burned his arm -- do you remember questions from
24 Mr. Kelly about that --
25 A. **Yes, ma'am.**

1 Q. The man who burned his arm. And he
2 specifically asked you about a woman named Melinda
3 Martin. Did you know someone named Melinda Martin?
4 A. **Yes, ma'am.**
5 Q. And how did you know Melinda?
6 A. **She was part of the Dream Team. That's**
7 **all I know of her.**
8 Q. After you ran and got the bucket with ice
9 water, brought it back, you put the man's arm in
10 it, how long did you stay with him?
11 A. **I don't know. Maybe five minutes.**
12 Q. And then your attention was taken
13 elsewhere?
14 A. **Yes, ma'am.**
15 Q. So would you know if Melinda Martin or
16 other Dream Team members tended to that man who had
17 burned his arm after you got the ice water for him?
18 A. **There were other people checking on him**
19 **after I left him.**
20 Q. You were asked questions by Mr. Kelly
21 about when it was over and the people who came out
22 who appeared to be okay. And tell the jury
23 generally what you remember seeing when Mr. Ray
24 ended his sweat lodge ceremony.
25 A. **As I stated before, Mr. Ray came out.**

1 **Several people came out behind him. And people**
2 **were, like I said, falling and laying everywhere,**
3 **and they were all hollering, why have they done**
4 **this to me? Why are they doing this to me? And**
5 **just -- I don't really know how many people came**
6 **out still standing because I was focused on the**
7 **people that were not standing.**
8 Q. The particular person that you were
9 focused on -- how long did you stay with that
10 person?
11 A. **I have no idea. Anywhere from 10 minutes**
12 **to 45 minutes to -- I have no concept of time in**
13 **that moment.**
14 Q. And let me have you refer back to the
15 transcript of your interview on October 26, 2009,
16 Exhibit 637, and look at page 16, which was the
17 page that Mr. Kelly was reading from.
18 I want to direct your attention to
19 lines 20 through 22. Just read it to yourself and
20 see if that refreshes your recollection as to how
21 long you were focused on that person.
22 MR. KELLY: Your Honor, I object to the
23 transcript being used to refresh for a prior
24 consistent statement.
25 THE COURT: You may -- you may look at that.

1 Overruled.
2 THE WITNESS: Yeah. That's what I said.
3 Q. BY MS. POLK: What do you see that it
4 says?
5 MR. KELLY: Your Honor, objection.
6 THE COURT: Sustained.
7 Q. BY MS. POLK: I'm sorry. Let me reask
8 that question. How long were you with that person
9 tending to that person?
10 A. **Again, anywhere from 10 minutes to an**
11 **hour and 15 minutes. I don't really know.**
12 Q. Okay. And during that time, Ms. Foster,
13 were you aware of other people after being hosed
14 off were feeling better and getting up?
15 A. **To be honest, no. I was focused on the**
16 **CPR going on behind me and this lady in front of**
17 **me. So, no. I don't know who got up and went or**
18 **where.**
19 Q. Mr. Kelly asked you specifically about
20 the question from the detective when he interviewed
21 you on October 26th about whether or not you saw
22 Mr. Ray helping the people who had been pulled out
23 the back. Will you describe for the jury what you
24 were feeling at that time when you talked to
25 Detective Diskin.

1 **A. In that -- at that time, I was very, very**
 2 **angry because I saw James Ray go to the end of the**
 3 **tarps and then disappear. And I never saw him**
 4 **again. And my heart just couldn't understand why,**
 5 **why somebody would walk away from that. And if he**
 6 **did go back, awesome. Great. But I can't say he**
 7 **did because I didn't witness that. I did not see**
 8 **it.**

9 **Q.** When you were interviewed on October 26th
 10 of 2009 by Detective Diskin --

11 **A. Uh-huh.**

12 **Q.** -- did he specifically ask you questions
 13 about insecticides, pesticides, or the rat
 14 poisoning?

15 **A. No, ma'am.**

16 **Q.** If he had, would you have answered
 17 truthfully?

18 **A. Yes, ma'am.**

19 **Q.** Do you recall -- when Detective Diskin
 20 interviewed you on that date, do you recall whether
 21 you told him about the Dream Team members pushing
 22 the lady back in?

23 **A. I believe I did. Yes.**

24 **Q.** Okay. And do you recall whether you told
 25 Detective Diskin about the man who burned his arm?

1 **A. Yes, I did.**

2 **Q.** And do you recall whether you told
 3 Detective Diskin then about the statement you heard
 4 about people being down and not breathing?

5 **A. Yes, ma'am.**

6 **Q.** And did you tell Detective Diskin what --
 7 MR. KELLY: Your Honor, objection. These are
 8 leading questions.

9 THE COURT: Overruled.

10 **Q.** BY MS. POLK: Do you recall if you told
 11 Detective Diskin what you told the jury today about
 12 what -- how you heard Mr. Ray respond about the
 13 people not breathing?

14 **A. Yes, ma'am. I did.**

15 **Q.** Do you recall if you told
 16 Detective Diskin anything about Mr. Ray directing
 17 people to go back to their cabins after the
 18 incident?

19 **A. Yes, ma'am. I did.**

20 MR. KELLY: Your Honor, again, this is not the
 21 proper use of transcript for prior consistent
 22 statements.

23 THE COURT: Sustained.

24 **Q.** BY MS. POLK: I just want to ask you a
 25 few questions about the use of any products at the

1 Angel Valley property to take care of the critters
 2 or the ants. You were asked a question by
 3 Mr. Kelly about the -- is it AMBRO?

4 **A. AMDRO.**

5 **Q.** AMDRO. Did you handle that yourself?

6 **A. Yes, ma'am.**

7 **Q.** And with gloved hands or bare hands?

8 **A. I don't wear gloves.**

9 **Q.** On how many occasions did you handle
 10 that?

11 **A. Only once.**

12 **Q.** Did you get sick after handling that?

13 **A. No, ma'am.**

14 **Q.** You said that you found that product in
 15 the shop on the property in June of 2010?

16 **A. Yes, ma'am.**

17 **Q.** Do you recall if the product was opened
 18 and used already?

19 **A. No, ma'am. It was not.**

20 **Q.** Did you -- it was a new product, in other
 21 words?

22 **A. Yes, ma'am.**

23 **Q.** I'm going to put up on the overhead
 24 Exhibit 140. Mr. Kelly asked you about some of the
 25 Vision Quest sites that are on the national forest

1 property.

2 **A. Yes, ma'am.**

3 **Q.** Did you ever put any insecticides or
 4 pesticides in the area that Mr. Kelly was pointing
 5 to?

6 **A. No, ma'am.**

7 **Q.** And will you draw on the map the area
 8 where you used the product for the ant killer.

9 **A. Right here.**

10 **Q.** Okay. Did you ever put any product down
 11 in the area of the bridge over the water?

12 **A. No, ma'am. It's only when the critters**
 13 **try to come inside the cabins that I have to do**
 14 **something with them.**

15 **Q.** Okay. And then on -- next to the sweat
 16 lodge we see the organic vegetable garden. You
 17 were asked some questions from Mr. Kelly about what
 18 you do about insects that might be eating. What do
 19 you grow there?

20 **A. We started the garden last year. We grew**
 21 **tomatoes, lettuce, carrots, arugula, things like**
 22 **that.**

23 **Q.** Do you have a problem with insects or
 24 animals eating what you're growing?

25 **A. They eat what they want.**

1 Q. Do you use any product there to kill off
2 the critters?
3 A. **No, ma'am. I don't.**
4 Q. And was that garden there in October of
5 2009?
6 A. **The garden was, but there was nothing**
7 **planted.**
8 Q. The tents that you described setting
9 up -- how do you open or close them?
10 A. **They have a zipper and flaps.**
11 Q. And would that zipper and flaps keep bugs
12 out?
13 A. **Uh-huh. Yes.**
14 Q. And then prior to 2010 when you took over
15 the job as maintenance, were you in the area of the
16 cabins and on the grounds of Angel Valley?
17 A. **Yes, ma'am.**
18 Q. Did you ever see any of the ant pellets
19 or the rat poison?
20 A. **No. I did not. Except in the building.**
21 Q. Where you've already described for jury?
22 A. **Yeah.**
23 Q. You were asked about the Hamiltons. And
24 Mr. Kelly asked you if the Hamiltons were doing
25 everything to save Angel Valley -- anything and

1 everything to save Angel Valley. And you agreed
2 with that. Do you know what the Hamiltons are
3 doing to save Angel Valley?
4 A. **I don't know everything they're doing to**
5 **save Angel Valley.**
6 Q. Do you know -- you agreed with that.
7 What did you mean when you agreed with that
8 statement from Mr. Kelly?
9 A. **What I meant was that any business owner**
10 **is going to do everything they can to save their**
11 **business. And this is part of their hearts and**
12 **part of their lives. And so, yeah. They're trying**
13 **to save it with everything they've got.**
14 Q. Are you familiar with the Hamiltons'
15 philosophy for running Angel Valley?
16 A. **Yes, ma'am.**
17 Q. Can you describe that philosophy for the
18 jury.
19 A. **The philosophy is be true to yourself, to**
20 **live from your heart, and to follow your heart and**
21 **not your mind.**
22 Q. And in that regard, what is the
23 Hamiltons' philosophy with regard to the property
24 and stewardship of the property? Do you know?
25 MR. KELLY: Objection. It's beyond the scope.

1 THE COURT: Sustained.
2 Q. BY MS. POLK: Well, Ms. Foster, Mr. Kelly
3 read to you something that is on the Angel Valley
4 website that is there with your permission, I
5 assume. Do you recall that?
6 A. **Yes. I wrote it.**
7 Q. And he read -- it says, Fawn Foster's
8 vision June 1st, 2010.
9 A. **Yes, ma'am.**
10 Q. I came to Angel Valley to find freedom
11 from the prison I had created in my life. I have
12 found that freedom. It is in living from the
13 heart, a place where trust --
14 MR. KELLY: Your Honor, objection. There is
15 no question. This is a statement.
16 THE COURT: Is this a preface to a question?
17 MS. POLK: Yes, it is.
18 THE COURT: Continue.
19 Q. BY MS. POLK: It is in living from the
20 heart, a place where trust in the creator of all
21 brings me to total peace and harmony with and
22 without.
23 Is that what you wrote?
24 A. **Yes, ma'am.**
25 Q. And have you seen the statement that is

1 on that website from the Hamiltons regarding their
2 stewardship for this property called Angel Valley?
3 MR. KELLY: Your Honor --
4 THE WITNESS: I have not read the newsletters.
5 No.
6 Q. BY MS. POLK: You have not?
7 A. **No.**
8 Q. During the interview on October 26th, you
9 said that there was an attorney there and that the
10 attorney was paid for by the Hamiltons. Do you
11 know, in fact, who paid for that attorney?
12 A. **The Hamiltons -- no. I don't know, in**
13 **fact.**
14 Q. Do you know if the Hamiltons' insurance
15 company paid for the attorney?
16 MR. KELLY: Your Honor, objection.
17 THE WITNESS: No, I don't.
18 THE COURT: Overruled. Question is answered.
19 Q. BY MS. POLK: Did you cooperate fully
20 with law enforcement during the interview on
21 October 8th?
22 A. **Yes, ma'am.**
23 Q. And did you cooperate fully with the
24 interview that occurred on October 26 with the
25 attorney present?

1 **A. Yes, ma'am.**
 2 **Q.** And have you continued to cooperate
 3 fully?
 4 **A. Yes, ma'am.**
 5 **Q.** You said that on the evening of
 6 October 8th you were with Sarah Mercer at their
 7 house on the Angel Valley property while Debbie
 8 Mercer went to the hospital. Did you observe
 9 Debbie before she went to the hospital?
 10 **A. Yes, ma'am.**
 11 **Q.** Can you describe for the jury what you
 12 observed about Debbie.
 13 **A. She was just really nauseated and just**
 14 **not feeling well. Just all of a sudden she was**
 15 **just really not -- emotions just -- she was real**
 16 **emotional.**
 17 **Q.** And you said that you --
 18 **A. And she thought she would be okay, but**
 19 **the paramedics told her to go ahead and go just in**
 20 **case.**
 21 **Q.** When was it that you saw her with the
 22 paramedics?
 23 **A. I didn't see her with the paramedics.**
 24 **That's what she told me --**
 25 **Q.** Okay.

1 **A. -- that the paramedics said, go ahead and**
 2 **go.**
 3 **Q.** Okay. Prior to 2009 did you observe how
 4 the tarps and the coverings for the sweat lodge
 5 were stored?
 6 **A. Yes.**
 7 MR. KELLY: Objection. It's beyond the scope.
 8 THE COURT: Sustained.
 9 **Q.** BY MS. POLK: I'm going to put up on the
 10 overhead Exhibit 522. And, first of all, Mr. Kelly
 11 asked you about the ceremony that occurred on
 12 October 11 and the burning of tobacco pouches in
 13 that ceremony.
 14 **A. Yes, ma'am.**
 15 **Q.** And if you look at what is depicted in
 16 that photograph, do you recognize what that is
 17 hanging down through the center?
 18 **A. They are prayer ties.**
 19 **Q.** And do you know whether or not prayer
 20 ties were burned in the fire on October 11th when
 21 you did the ceremony?
 22 **A. Yes, they were.**
 23 **Q.** And are the tobacco pouches something
 24 different from the prayer ties?
 25 **A. That's what they're called is "prayer**

1 **ties."**
 2 **Q.** That's the same thing --
 3 **A. Yes.**
 4 **Q.** -- the tobacco pouches and prayer ties?
 5 **A. Yes, ma'am.**
 6 **Q.** And when they were burned in the ceremony
 7 on October 11th, you were there?
 8 **A. Yes, ma'am.**
 9 **Q.** And did you or anyone else get sick when
 10 those prayer ties were burned?
 11 **A. No, ma'am.**
 12 MS. POLK: Your Honor, I'm looking for
 13 Exhibit 508. I can't find it. But Counsel has
 14 agreed that I can use his copy.
 15 THE COURT: All right.
 16 MR. KELLY: Agreed.
 17 **Q.** BY MS. POLK: I'm going to put
 18 Exhibit 508 back up on the overhead. And this is
 19 the exhibit that Mr. Kelly showed you to try to
 20 establish the distance where the log was -- between
 21 the log and the sweat lodge.
 22 Do you remember that line of questioning?
 23 **A. Yes, ma'am.**
 24 **Q.** First of all, I wanted to ask you. You
 25 testified about pulling blankets off the sweat

1 lodge to cool people?
 2 **A. Yes, ma'am.**
 3 **Q.** Does this photograph show some of those
 4 blankets that you pulled off? For example, if
 5 we --
 6 **A. Back in the -- this looks like -- well,**
 7 **if this is after, then this back here. Blue**
 8 **blankets back here and here, blankets back there,**
 9 **and there is a light one there.**
 10 **Q.** Do you know how many blankets you might
 11 have pulled off to wrap people in?
 12 **A. I personally only pulled two off. When I**
 13 **went to pull the third one off, the officers said,**
 14 **stop. And so I didn't touch anything else.**
 15 **Q.** Officers were already at the scene?
 16 **A. Yes, ma'am.**
 17 **Q.** Okay. And now, in terms of the
 18 distance -- first of all, do you know whether a
 19 camera lens can accurately depict distances between
 20 objects?
 21 **A. I don't know.**
 22 **Q.** Well, for example, if we look at the
 23 picture that's on the overhead, if I can direct
 24 your attention to the cups that are down in the
 25 front.

1 **A. Yes, ma'am.**
 2 **Q.** Would you agree that those cups were not
 3 the same size as that bucket right there?
 4 **A. Yes.**
 5 **Q.** Yeah. Would you agree in the photograph
 6 the cups appear to be the same size as some of
 7 these objects?
 8 **A. Yes, ma'am.**
 9 **Q.** Would you agree, Ms. Foster, that if
 10 detectives at the crime scene drew a diagram and
 11 got out their tape measure and measured distances
 12 that their distances would be more accurate than
 13 whatever you have estimated here in court?
 14 **A. Yes, ma'am.**
 15 MR. KELLY: Your Honor, objection. We don't
 16 have that diagram.
 17 THE COURT: Pardon me?
 18 MR. KELLY: Objection.
 19 THE COURT: I didn't hear the objection as to
 20 the grounds.
 21 MR. KELLY: Referencing something I don't
 22 believe we have.
 23 Judge, I'll strike the objection.
 24 THE COURT: All right. The objection has been
 25 withdrawn.

1 MR. KELLY: I'll withdraw it, Judge.
 2 **Q.** BY MS. POLK: If there is a diagram that
 3 sets forth distances, would you agree that that
 4 might be more accurate than whatever you're able to
 5 recall here today?
 6 **A. Yes, ma'am.**
 7 MR. KELLY: Your Honor, I'm going to object.
 8 There is no diagram.
 9 THE COURT: Sustained.
 10 **Q.** BY MS. POLK: And I'm going to put back
 11 up on the overhead Exhibit 144. And do you see the
 12 log that you were sitting on in that exhibit?
 13 **A. Yes, ma'am.**
 14 **Q.** Forgetting tape measures, forgetting
 15 attorneys standing in the back of the courtroom and
 16 talking to you, would you just describe for the
 17 jury what you recall today about how far you were
 18 from the entrance to the sweat lodge when you sat
 19 on that log.
 20 **A. To me it felt like 10 or 15 feet.**
 21 **Q.** And in terms of where I'm standing, does
 22 that reflect the distance that you felt it was?
 23 **A. Thereabouts, yeah. But not -- maybe.**
 24 **Like I said, it's a little bit further back. No.**
 25 **I was pointing at that guy behind you.**

1 **Q.** Okay. And when you were that distance,
 2 your testimony about what you heard Mr. Ray say,
 3 was the door to the sweat lodge opened or closed?
 4 **A. It was open.**
 5 **Q.** Did you have any trouble hearing what
 6 somebody somewhere in the tent said about people
 7 not breathing?
 8 **A. Like I said, I did not hear the answer**
 9 **to, are they breathing?**
 10 **Q.** Okay. What's the first thing you
 11 remember hearing?
 12 **A. From start to finish or in the lodge or**
 13 **what?**
 14 **Q.** From start to finish. You're sitting on
 15 the log. The door is open. And you hear
 16 something. What do you hear?
 17 **A. The first thing that I remember is -- is**
 18 **James Ray telling everybody in the tent that they**
 19 **were strong and that they could make it and that**
 20 **they were not their bodies and they could push**
 21 **through this.**
 22 **The next thing I remember is I can hear**
 23 **him say, open the flap. And there wasn't much**
 24 **conversation going on inside in that moment. I**
 25 **could hear him saying at some point that he was the**

1 **Alpha and Omega, the beginning and the end, and he**
 2 **was God.**
 3 MR. KELLY: Your Honor, I object.
 4 THE WITNESS: This is what I could hear.
 5 THE COURT: Any grounds, Mr. Kelly?
 6 MR. KELLY: Your Honor, maybe we need to
 7 approach.
 8 THE COURT: Ladies and gentlemen, please feel
 9 to stand and stretch.
 10 And likewise, Ms. Foster.
 11 (Sidebar conference.)
 12 MR. KELLY: Judge, nowhere in any of her
 13 statements or the disclosure or direct examination
 14 this morning or cross-examination is the statement,
 15 I heard him say, I'm the Alpha and Omega, and he's
 16 God.
 17 THE COURT: Ms. Polk.
 18 MR. KELLY: The statement of my clients are
 19 supposed to be disclosed under Rule 15, which I
 20 think they did as it relates to this witness until
 21 we get to that statement. And there is something
 22 that's just completely out of the blue that has
 23 never been disclosed. I'm not accusing the state
 24 of any impropriety. I submit it's made up. But
 25 I'd ask that it just be stricken and we move on.

1 THE COURT: Ms. Polk.
 2 MS. POLK: Your Honor, again, this witness is
 3 testifying. She's been subject to
 4 cross-examination. She was available for the
 5 defense to interview her. They chose not to. This
 6 is fair redirect.

7 THE COURT: This is an issue as to whether she
 8 could possibly hear. There is redirect on what she
 9 did hear.

10 MR. KELLY: Your Honor, may I recross on that
 11 statement?

12 THE COURT: On that statement, yes. That
 13 limited point.

14 MR. KELLY: Thank you.

15 (End of sidebar conference.)

16 MS. POLK: We're almost through, Ms. Foster.

17 THE COURT: Ms. Polk, when you're ready.

18 Q. BY MS. POLK: The statement that you just
 19 made about hearing Mr. Ray say that he's Alpha --
 20 or we're Alpha, Omega, and he's God -- are you just
 21 remembering that now?

22 A. No, ma'am.

23 Q. And when did you remember that?

24 A. That day.

25 Q. Okay. Were you ever asked when you were

1 interviewed by the detectives specifically about
 2 everything you heard inside the sweat lodge?

3 A. No.

4 Q. So tell the jury what else you heard.

5 A. Just what I've already stated, him
 6 telling the one gentleman that he was going to be
 7 all right. He wasn't going to die. And --

8 MR. KELLY: Your Honor, I'm going to object to
 9 the question requesting a narrative response.

10 THE COURT: She answered the question.

11 So sustained for any further narrative on
 12 that point.

13 Q. BY MS. POLK: And then you heard a voice
 14 inside talk about three people down?

15 A. Yes, ma'am.

16 MR. KELLY: Your Honor, objection. Leading.

17 THE COURT: Sustained.

18 Q. BY MS. POLK: How loud was that voice?

19 MR. KELLY: Your Honor, objection.

20 THE COURT: Sustained.

21 Q. BY MS. POLK: Describe the voice for the
 22 jury, if you can.

23 MR. KELLY: Judge, there is no question.

24 THE COURT: The original question in this line
 25 was sustained.

1 So, Ms. Polk, please phrase another
 2 question.

3 Q. BY MS. POLK: What did you hear from
 4 inside the sweat lodge next?

5 A. Somebody inside the lodge said, there
 6 was -- there are three people down in here.

7 Q. And would you describe the voice.

8 A. It sounded like a man's voice.

9 Q. And in terms of volume, what do you
 10 recall?

11 A. What do you mean by "volume"?

12 Q. How loud was that voice?

13 A. Audible. I mean, it wasn't really loud
 14 or really low. It was just a stern, there is three
 15 people down here -- back here.

16 Q. And what did you hear said next?

17 A. The next thing I heard was Mr. Ray
 18 saying, are they breathing? And then I didn't hear
 19 the answer to that.

20 Q. And then did you --

21 A. And then the next thing I heard was,
 22 leave them there. We have one last round.

23 Q. How does the door to that sweat lodge
 24 open and close? Who opens and closes it?

25 A. The person on the outside has to roll it

1 up and remove it -- or move it so that people can
 2 come in and out.

3 Q. Okay. And was the door, then, closed
 4 after Mr. Ray made that statement about leaving
 5 them?

6 A. Yes.

7 Q. You were asked some questions about the
 8 process of getting the rock from the hot fire
 9 inside the sweat lodge. And Mr. Kelly asked you if
 10 Ted Mercer dragged the pitchfork with the rock. Do
 11 you recall that?

12 A. Not normally. No. He just carried it.

13 Q. Ted Mercer did what?

14 A. Carried it -- carried the rock with the
 15 pitchfork in the door --

16 Q. And then once it was handed off -- do you
 17 know who that pitchfork with the rock on was handed
 18 off to inside?

19 A. No, I do not.

20 Q. You don't know if it was Mr. Ray or
 21 somebody else who --

22 A. I do not.

23 Q. And then Mr. Kelly asked you about how
 24 the participants inside the sweat lodge were free
 25 to leave at any time. And you agreed they were.

1 Do you recall that?
 2 **A. Yes, ma'am.**
 3 **Q.** If a person was unconscious inside the
 4 sweat lodge --
 5 MR. KELLY: Your Honor, objection.
 6 **Q.** BY MS. POLK: -- would they be free to
 7 leave?
 8 **A. No, ma'am.**
 9 MR. KELLY: Objection, Your Honor.
 10 THE COURT: Sustained. Sustained.
 11 **Q.** BY MS. POLK: You told Mr. Kelly that it
 12 offended you that anybody would be paying for a --
 13 to facilitate a sweat lodge. Do you recall that?
 14 **A. Yes, ma'am.**
 15 **Q.** Can you tell the jury why it offends you?
 16 **A. It is my belief that no spiritual**
 17 **ceremony should be charged for, not just a sweat**
 18 **lodge, no spiritual ceremony. That's your**
 19 **connection with God. Nobody has a right to put a**
 20 **price on that.**
 21 **Q.** And the ceremony that was held a year
 22 later that Mr. Kelly asked you about -- did you
 23 participate in that?
 24 **A. Yes, ma'am.**
 25 **Q.** Do you know who was invited to that

1 ceremony?
 2 **A. I know several of the people, but not**
 3 **everybody. No.**
 4 **Q.** Were all the participants from the 2009
 5 ceremony conducted by Mr. Ray invited?
 6 **A. All of them were invited. Yes.**
 7 **Q.** And do you know how many came?
 8 **A. Two, I believe.**
 9 **Q.** Do you know who they were?
 10 **A. Mark Rock and Vicky Rock.**
 11 **Q.** Thank you, Ms. Foster.
 12 Thank you, Your Honor.
 13 THE COURT: Thank you, Ms. Polk.
 14 Mr. Kelly, you were going to recross on
 15 that one point.
 16 MR. KELLY: Thank you, Judge.
 17 RECROSS-EXAMINATION
 18 BY MR. KELLY:
 19 **Q.** Just a moment ago, Ms. Foster, you made a
 20 statement that my client said something to the
 21 effect, I'm the Alpha, the Omega and that he's God.
 22 Do you recall that response?
 23 **A. Yes, sir.**
 24 **Q.** You did not tell Detective Barbaro on
 25 October 8, 2009, that my client made that

1 statement; correct?
 2 **A. No, sir, I did not.**
 3 **Q.** You did not?
 4 **A. It wasn't pertinent.**
 5 **Q.** You did not tell Detective Diskin on
 6 October 26th, 2009, that my client made that
 7 statement; correct?
 8 **A. No, sir, I did not.**
 9 **Q.** On October 26, 2009, Detective Diskin
 10 took you step by step through what happened during
 11 the sweat lodge; correct?
 12 **A. Yes, sir.**
 13 **Q.** You did not tell this jury this morning
 14 when Ms. Polk took you step by step through the
 15 sweat lodge that my client made that statement;
 16 correct?
 17 **A. No, sir. I did not.**
 18 **Q.** During my cross-examination when I took
 19 you step by step through the sweat lodge and my
 20 client's statements, you did not make that
 21 statement; correct?
 22 MS. POLK: Your Honor, objection.
 23 Mischaracterizes the cross-examination by the
 24 Mr. Kelly.
 25 MR. KELLY: I'll rephrase.

1 **Q.** During my cross-examination you did not
 2 tell this jury that my client made that statement;
 3 correct?
 4 **A. No, sir. I did not. You did not**
 5 **continue ask me everything --**
 6 **Q.** Ma'am, on August 13, 2002, you were --
 7 Can I finish my question?
 8 THE COURT: Okay. We're going to start with a
 9 question.
 10 And, Ms. Foster, just answer the
 11 question, please.
 12 THE WITNESS: Yes.
 13 **Q.** BY MR. KELLY: On August 13, 2002, you
 14 were convicted of lying to a law enforcement
 15 officer; correct?
 16 MS. POLK: Your Honor, this goes beyond the
 17 scope.
 18 THE WITNESS: Yes, sir, I was.
 19 THE COURT: Overruled.
 20 MR. KELLY: May I ask my final question?
 21 THE COURT: Ask your question.
 22 **Q.** BY MR. KELLY: On March 18th, 2005, you
 23 were convicted of lying to a law enforcement
 24 officer; correct?
 25 **A. Yes, I was, as I stated to begin with.**

1 MR. KELLY: Thank you, Judge.
 2 THE COURT: Ladies and gentlemen, are there
 3 any questions for this witness?
 4 Mr. Nevills, may I have the question?
 5 Ms. Foster, please remain seated there.
 6 I'm going to go over the jury questions.
 7 Counsel, please approach to review the
 8 question.
 9 (Sidebar conference.)
 10 MR. KELLY: I would object, Judge, based on
 11 the prior discussions.
 12 THE COURT: Ms. Polk?
 13 MS. POLK: The state has no objection,
 14 Your Honor.
 15 THE COURT: I'm thinking that if there was
 16 knowledge, this -- there would have been another
 17 issue before the Court, most likely would have been
 18 raised. Yes, it's -- I think the testimony has
 19 essentially been that she really didn't have any
 20 involvement with the 2008. So it's going to get
 21 right into what she might have heard.
 22 And I've been assuming, Ms. Polk, that at
 23 some point there is going to be somebody with
 24 direct, personal knowledge and we're going to be
 25 confronting that issue.

1 MS. POLK: Yes, Your Honor. I believe this
 2 line of questioning is relevant to causation. But
 3 I will be calling her back anyway about her
 4 experience in that same structure.
 5 THE COURT: And I understand there is a
 6 foundation. At this time I'm not going to ask that
 7 question. There has been talk about if there is
 8 sufficient foundation and what purposes might be
 9 there. But this is going to go out there -- who
 10 knows what she might do.
 11 She's indicated so far she wasn't around
 12 that 2008 ceremony. She went to work there a
 13 little bit before that time. But she was not
 14 familiar with that directly. So I'm not going to
 15 ask this question.
 16 (End of sidebar conference.)
 17 THE COURT: Ladies and gentlemen, please
 18 recall, as I indicated, the preliminary
 19 instructions. I make decisions on questions that
 20 are asked by attorneys and by jurors. Those are my
 21 decisions and to never read anything into that,
 22 whether it's an attorney's question or a juror's
 23 question. Those are matters for the Judge.
 24 All right. At this time, we'll take the
 25 weekend recess. Again, over the long break,

1 remember the admonition, all aspects of it, follow
 2 that. And please be back next Tuesday at 9:15 to
 3 be reassembled.
 4 And I just want to address the witness.
 5 Ms. Foster, you will be temporarily excused anyway.
 6 You're being excused from the trial at this time,
 7 but you're subject to being recalled. You might be
 8 called back. If a person is actually released,
 9 excused completely, that person can actually remain
 10 in the courtroom. You cannot do that because you
 11 may be recalled.
 12 But all the other parts of the rule of
 13 exclusion of witnesses applies to you, meaning you
 14 may not communicate or attempt to communicate in
 15 any way with any other witness in the case until
 16 the trial is completely over. It's a good idea not
 17 to talk to anybody about the case until it's over
 18 except for the lawyers. You can talk to them as
 19 long as other witnesses aren't present. And
 20 remember to avoid any kind of media exposure and
 21 not let anybody else talk to you about the matter
 22 or anything like that.
 23 Do you understand?
 24 THE WITNESS: Yes, Your Honor.
 25 THE COURT: Thank you very much. We'll be in

1 recess --
 2 MS. POLK: I'm sorry. May we quickly
 3 approach, Your Honor?
 4 THE COURT: Yes.
 5 (Sidebar conference.)
 6 MS. POLK: I wanted to make sure she can talk
 7 to the Hamiltons about noncase things. I'm afraid
 8 she's going to literally think she can't.
 9 THE COURT: I say about the case the rule
 10 actually says not to have witnesses communicate at
 11 all. That's not a practical statement of that.
 12 MS. POLK: Right.
 13 THE COURT: Mr. Kelly?
 14 MR. KELLY: I have no objection to the state
 15 advising her of that afterwards.
 16 THE COURT: Did you want to take care of that?
 17 MS. POLK: I can take care of it if Mr. Kelly
 18 has no objection. I didn't want it to become a
 19 issue later. She'd been talking to the Hamiltons
 20 about noncase --
 21 THE COURT: I'm going to reiterate it's
 22 talking about the case and testimony.
 23 (End of sidebar conference.)
 24 THE COURT: Ms. Foster, I wanted to clarify
 25 that it has to do with communicating about the case

1 in any way or your testimony. That's what you
 2 can't communicate about to people involved in it
 3 and that kind of thing.

4 THE WITNESS: Yes.

5 THE COURT: And, again, the attorneys can
 6 instruct you on that further. Okay?

7 THE WITNESS: Thank you.

8 THE COURT: Thank you.

9 We will be in recess.

10 Thank you, ladies and gentlemen.

11 (The proceedings concluded.)
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 STATE OF ARIZONA)
 2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE

3

4 I, Mina G. Hunt, do hereby certify that I
 5 am a Certified Reporter within the State of Arizona
 6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
 8 were taken in shorthand by me at the time and place
 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript

12 I further certify that I am not related
 13 to, employed by, nor of counsel for any of the
 14 parties or attorneys herein, nor otherwise
 15 interested in the result of the within action

16 In witness whereof, I have affixed my
 17 signature this 12th day of April, 2011

18

19

20

21

22

23

24 -----
 MINA G HUNT, AZ CR No 50619
 CA CSR No 8335

25

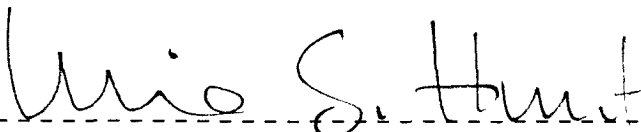
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE
3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 12th day of April, 2011.
18
19
20
21

22 
23 -----

24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335